

067883744

SENATE BILL NO. 120

Offered January 11, 2006

Prefiled January 9, 2006

A BILL to amend and reenact §§ 16.1-253.1 and 16.1-279.1 of the Code of Virginia, relating to protective orders in cases of family abuse.

Patrons—Howell, Ticer and Whipple; Delegates: Amundson, Callahan, Plum and Scott, J.M.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.1 and 16.1-279.1 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-253.1. Preliminary protective orders in cases of family abuse; confidentiality.

A. Upon the filing of a petition alleging that the petitioner is or has been, within a reasonable period of time, subjected to family abuse, the court may issue a preliminary protective order against an allegedly abusing person in order to protect the health and safety of the petitioner or any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred shall constitute good cause.

A preliminary protective order may include any one or more of the following conditions to be imposed on the allegedly abusing person:

1. Prohibiting acts of family abuse.

2. Prohibiting such other contacts between the parties as the court deems appropriate.

3. Prohibiting such other contacts with the allegedly abused family or household member as the court deems necessary to protect the safety of such persons.

4. Granting the petitioner possession of the premises occupied by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession shall affect title to any real or personal property.

5. Enjoining the respondent from terminating any necessary utility service to a premises that the petitioner has been granted possession of pursuant to subdivision 4 or, where appropriate, ordering the respondent to restore utility services to such premises.

6. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner alone or jointly owned by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession or use shall affect title to the vehicle.

6 7. Requiring that the allegedly abusing person provide suitable alternative housing for the petitioner and any other family or household member and, where appropriate, requiring the respondent to pay deposits to connect or restore necessary utility services in the alternative housing provided.

B. Upon receipt of the order by a local law-enforcement agency for service, the agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network system. A copy of a preliminary protective order shall be served as soon as possible on the allegedly abusing person in person as provided in § 16.1-264, and upon service, the agency making service shall enter the date and time of service into the Virginia Criminal Information Network system. The preliminary order shall specify a date for the full hearing. The hearing shall be held within fifteen days of the issuance of the preliminary order. However, upon motion of the respondent and for good cause shown, the court may continue the hearing. The preliminary order shall remain in effect until the hearing. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of the order and information regarding the date and time of service. The order shall further specify that either party may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.

Upon receipt of the return of service or other proof of service pursuant to subsection C of § 16.1-264, the clerk shall forward forthwith an attested copy of the preliminary protective order to the local police department or sheriff's office which shall, upon receipt, enter into the Virginia Criminal Information Network system any other information required by the State Police which was not previously entered. If the order is later dissolved or modified, a copy of the dissolution or modification

INTRODUCED

SB120

59 order shall also be attested, forwarded and entered in the Virginia Criminal Information Network system
60 as described above.

61 C. The preliminary order is effective upon personal service on the allegedly abusing person. Except
62 as otherwise provided in § 16.1-253.2, a violation of the order shall constitute contempt of court.

63 D. At a full hearing on the petition, the court may issue a protective order pursuant to § 16.1-279.1 if
64 the court finds that the petitioner has proven the allegation of family abuse by a preponderance of the
65 evidence.

66 E. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's
67 office, nor any employee of them, may disclose, except among themselves, the residential address,
68 telephone number, or place of employment of the person protected by the order or that of the family of
69 such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme
70 Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

71 F. As used in this section, "copy" includes a facsimile copy.

72 G. No fee shall be charged for filing or serving any petition or order pursuant to this section.

73 § 16.1-279.1. Protective order in cases of family abuse.

74 A. In cases of family abuse, the court may issue a protective order to protect the health and safety of
75 the petitioner and family or household members of the petitioner. A protective order issued under this
76 section may include any one or more of the following conditions to be imposed on the respondent:

77 1. Prohibiting acts of family abuse;

78 2. Prohibiting such contacts by the respondent with the petitioner or family or household members of
79 the petitioner as the court deems necessary for the health or safety of such persons;

80 3. Granting the petitioner possession of the residence occupied by the parties to the exclusion of the
81 respondent; however, no such grant of possession shall affect title to any real or personal property;

82 4. *Enjoining the respondent from terminating any necessary utility service to the residence to which*
83 *the petitioner was granted possession pursuant to subdivision 3 or, where appropriate, ordering the*
84 *respondent to restore utility services to that residence;*

85 5. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner
86 alone or jointly owned by the parties to the exclusion of the respondent; however, no such grant of
87 possession or use shall affect title to the vehicle;

88 6. Requiring that the respondent provide suitable alternative housing for the petitioner and, if
89 appropriate, any other family or household member *and where appropriate, requiring the respondent to*
90 *pay deposits to connect or restore necessary utility services in the alternative housing provided;*

91 7. Ordering the respondent to participate in treatment, counseling or other programs as the court
92 deems appropriate; and

93 8. Any other relief necessary for the protection of the petitioner and family or household members
94 of the petitioner, including a provision for temporary custody or visitation of a minor child.

95 A1. If a protective order is issued pursuant to subsection A of this section, the court may also issue a
96 temporary child support order for the support of any children of the petitioner whom the respondent has
97 a legal obligation to support. Such order shall terminate upon the determination of support pursuant to
98 § 20-108.1.

99 B. The protective order may be issued for a specified period; however, unless otherwise authorized
100 by law, a protective order may not be issued under this section for a period longer than two years. A
101 copy of the protective order shall be served on the respondent and provided to the petitioner as soon as
102 possible. The clerk shall, upon receipt, forward forthwith an attested copy of the order to the local
103 police department or sheriff's office which shall, upon receipt, enter the name of the person subject to
104 the order and other appropriate information required by the Department of State Police into the Virginia
105 Criminal Information Network system established and maintained by the Department pursuant to Chapter
106 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer information electronically to the
107 Virginia Criminal Information Network system. If the order is later dissolved or modified, a copy of the
108 dissolution or modification order shall also be attested, forwarded and entered in the system as described
109 above.

110 C. Except as otherwise provided in § 16.1-253.2, a violation of a protective order issued under this
111 section shall constitute contempt of court.

112 D. The court may assess costs and attorneys' fees against either party regardless of whether an order
113 of protection has been issued as a result of a full hearing.

114 E. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate
115 jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths,
116 the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing
117 violent or threatening acts or harassment against or contact or communication with or physical proximity
118 to another person, including any of the conditions specified in subsection A, shall be accorded full faith
119 and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided
120 reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person

121 against whom the order is sought to be enforced sufficient to protect such person's due process rights
122 and consistent with federal law. A person entitled to protection under such a foreign order may file the
123 order in any juvenile and domestic relations district court by filing with the court an attested or
124 exemplified copy of the order. Upon such a filing, the clerk shall forward forthwith an attested copy of
125 the order to the local police department or sheriff's office which shall, upon receipt, enter the name of
126 the person subject to the order and other appropriate information required by the Department of State
127 Police into the Virginia Criminal Information Network system established and maintained by the
128 Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer
129 information electronically to the Virginia Criminal Information Network system.

130 Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy
131 available of any foreign order filed with that court. A law-enforcement officer may, in the performance
132 of his duties, rely upon a copy of a foreign protective order or other suitable evidence which has been
133 provided to him by any source and may also rely upon the statement of any person protected by the
134 order that the order remains in effect.

135 F. Either party may at any time file a written motion with the court requesting a hearing to dissolve
136 or modify the order. Proceedings to dissolve or modify a protective order shall be given precedence on
137 the docket of the court.

138 G. As used in this section, "copy" includes a facsimile copy.

139 H. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's
140 office, nor any employee of them, may disclose, except among themselves, the residential address,
141 telephone number, or place of employment of the person protected by the order or that of the family of
142 such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme
143 Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

144 I. No fee shall be charged for filing or serving any petition or order pursuant to this section.