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HOUSE BILL NO. 2576

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 2, 2007)

(Patron Prior to Substitute—Delegate Shannon)

A BILL to amend and reenact §§ 16.1-253.1, and 20-103 of the Code of Virginia, relating to extending preliminary protective orders.

Be it enacted by the General Assembly of Virginia:**1. That §§ 16.1-253.1, and 20-103 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.

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.

8. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner.

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~~ 15 days of the issuance of the preliminary order. *If the respondent fails to appear at this hearing, the court may, for good cause shown, extend the protective 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 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 § 20-103. Court may make orders pending suit for divorce, custody or visitation, etc.

74 A. In suits for divorce, annulment and separate maintenance, and in proceedings arising under
75 subdivision A 3 or subsection L of § 16.1-241, the court having jurisdiction of the matter may, at any
76 time pending a suit pursuant to this chapter, in the discretion of such court, make any order that may be
77 proper (i) to compel a spouse to pay any sums necessary for the maintenance and support of the
78 petitioning spouse, including an order that the other spouse provide health care coverage for the
79 petitioning spouse, unless it is shown that such coverage cannot be obtained, (ii) to enable such spouse
80 to carry on the suit, (iii) to prevent either spouse from imposing any restraint on the personal liberty of
81 the other spouse, (iv) to provide for the custody and maintenance of the minor children of the parties,
82 including an order that either party provide health care coverage for the children, (v) to provide support,
83 calculated in accordance with § 20-108.2, for any child of the parties to whom a duty of support is
84 owed and to continue to support any child over the age of 18 who meets the requirements set forth in
85 subsection C of § 20-124.2, (vi) for the exclusive use and possession of the family residence during the
86 pendency of the suit, (vii) to preserve the estate of either spouse, so that it be forthcoming to meet any
87 decree which may be made in the suit, or (viii) to compel either spouse to give security to abide such
88 decree. The parties to any petition where a child whose custody, visitation, or support is contested shall
89 show proof that they have attended within the 12 months prior to their court appearance or that they
90 shall attend within 45 days thereafter an educational seminar or other like program conducted by a
91 qualified person or organization approved by the court except that the court may require the parties to
92 attend such seminar or program in uncontested cases only if the court finds good cause. The seminar or
93 other program shall be a minimum of four hours in length and shall address the effects of separation or
94 divorce on children, parenting responsibilities, options for conflict resolution and financial
95 responsibilities. Once a party has completed one educational seminar or other like program, the required
96 completion of additional programs shall be at the court's discretion. Parties under this section shall
97 include natural or adoptive parents of the child, or any person with a legitimate interest as defined in
98 § 20-124.1. The fee charged a party for participation in such program shall be based on the party's
99 ability to pay; however, no fee in excess of \$50 may be charged. Whenever possible, before
100 participating in mediation or alternative dispute resolution to address custody, visitation or support, each
101 party shall have attended the educational seminar or other like program. The court may grant an
102 exemption from attendance of such program for good cause shown or if there is no program reasonably
103 available. Other than statements or admissions by a party admitting criminal activity or child abuse, no
104 statement or admission by a party in such seminar or program shall be admissible into evidence in any
105 subsequent proceeding.

106 B. In addition to the terms provided in subsection A, upon a showing by a party of reasonable
107 apprehension of physical harm to that party by such party's family or household member as that term is
108 defined in § 16.1-228, and consistent with rules of the Supreme Court of Virginia, the court may enter
109 an order excluding that party's family or household member from the jointly owned or jointly rented
110 family dwelling. In any case where an order is entered under this paragraph, pursuant to an ex parte
111 hearing, the order shall not exclude a family or household member from the family dwelling for a
112 period in excess of 15 days from the date the order is served, in person, upon the person so excluded.
113 The order may provide for an extension of time beyond the 15 days, to become effective automatically.
114 The person served may at any time file a written motion in the clerk's office requesting a hearing to
115 dissolve or modify the order. Nothing in this section shall be construed to prohibit the court from
116 extending an order entered under this subsection for such longer period of time as is deemed
117 appropriate, after a hearing on notice to the parties. *If the party subject to the order fails to appear at*
118 *this hearing, the court may, for good cause shown, extend the order.*

119 C. In cases other than those for divorce in which a custody or visitation arrangement for a minor
120 child is sought, the court may enter an order providing for custody, visitation or maintenance pending
121 the suit as provided in subsection A. The order shall be directed to either parent or any person with a

legitimate interest who is a party to the suit.

D. Orders entered pursuant to this section which provide for custody or visitation arrangements pending the suit shall be made in accordance with the standards set out in Chapter 6.1 (§ 20-124.1 et seq.) of this title. Orders entered pursuant to subsection B shall be certified by the clerk and forwarded as soon as possible to the local police department or sheriff's office which shall, on the date of receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia crime information network system established and maintained by the Department of State Police pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. If the order is later dissolved or modified, a copy of the dissolution or modification shall also be certified, forwarded and entered in the system as described above.

E. An order entered pursuant to this section shall have no presumptive effect and shall not be determinative when adjudicating the underlying cause.