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HOUSE BILL NO. 970

Offered January 9, 2008

Prefiled January 8, 2008

A BILL to amend and reenact §§ 16.1-279.1 and 19.2-152.10 of the Code of Virginia, relating to violation of protective orders.

Patron—Shannon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-279.1 and 19.2-152.10 of the Code of Virginia are amended and reenacted as follows:

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

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

1. Prohibiting acts of family abuse;

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

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

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

5. 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 respondent; however, no such grant of possession or use shall affect title to the vehicle;

6. Requiring that the respondent provide suitable alternative housing for the petitioner and, if appropriate, 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;

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

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

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

A2. *Upon the issuance of a protective order, the court may place the respondent on active probation, and if the court places the respondent on active probation, any violation of the order shall be a probation violation.*

B. The protective order may be issued for a specified period; however, unless otherwise authorized by law, a protective order may not be issued under this section for a period longer than two years. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. The clerk shall, upon receipt, forward forthwith an attested copy of the order to the local police department or sheriff's office which shall, upon 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 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. 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 system as described above.

C. Except as otherwise provided in § 16.1-253.2, a violation of a protective order issued under this section shall constitute contempt of court *and, if the court placed the respondent on probation upon the issuance of the order, shall be a probation violation.*

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

E. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate

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HB970

59 jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths,
60 the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing
61 violent or threatening acts or harassment against or contact or communication with or physical proximity
62 to another person, including any of the conditions specified in subsection A, shall be accorded full faith
63 and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided
64 reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person
65 against whom the order is sought to be enforced sufficient to protect such person's due process rights
66 and consistent with federal law. A person entitled to protection under such a foreign order may file the
67 order in any juvenile and domestic relations district court by filing with the court an attested or
68 exemplified copy of the order. Upon such a filing, the clerk shall forward forthwith an attested copy of
69 the order to the local police department or sheriff's office which shall, upon receipt, enter the name of
70 the person subject to the order and other appropriate information required by the Department of State
71 Police into the Virginia Criminal Information Network system established and maintained by the
72 Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer
73 information electronically to the Virginia Criminal Information Network system.

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

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

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

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

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

89 § 19.2-152.10. Protective order in cases of stalking and acts of violence.

90 A. The court may issue a protective order pursuant to this chapter to protect the health and safety of
91 the petitioner and family or household members of a petitioner upon (i) the issuance of a warrant for a
92 criminal offense resulting in a serious bodily injury to the petitioner, or a violation of § 18.2-60.3, (ii) a
93 hearing held pursuant to subsection D of § 19.2-152.9, or (iii) a conviction for a criminal offense
94 resulting in a serious bodily injury to the petitioner, or a violation of § 18.2-60.3. A protective order
95 issued under this section may include any one or more of the following conditions to be imposed on the
96 respondent:

97 1. Prohibiting criminal offenses that may result in injury to person or property, or acts of stalking in
98 violation of § 18.2-60.3;

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

101 3. Any other relief necessary to prevent criminal offenses that may result in injury to person or
102 property, or acts of stalking, communication or other contact of any kind by the respondent; and

103 4. *Upon the issuance of a permanent protective order, the court may place the respondent on active
104 probation, and if the court places the respondent on active probation, any violation of the order shall be
105 a probation violation.*

106 B. The protective order may be issued for a specified period; however, unless otherwise authorized
107 by law, a protective order may not be issued under this section for a period longer than two years. A
108 copy of the protective order shall be served on the respondent and provided to the petitioner as soon as
109 possible. The clerk shall upon receipt forward forthwith an attested copy of the order to the local police
110 department or sheriff's office which shall, upon receipt, enter the name of the person subject to the order
111 and other appropriate information required by the Department of State Police into the Virginia Criminal
112 Information Network system established and maintained by the Department pursuant to Chapter 2
113 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer information electronically to the
114 Virginia Criminal Information Network system. If the order is later dissolved or modified, a copy of the
115 dissolution or modification order shall also be attested, forwarded and entered into the system as
116 described above.

117 C. Except as otherwise provided, a violation of a protective order issued under this section shall
118 constitute contempt of court and, *if the court placed the respondent on probation upon the issuance of
119 the order, a probation violation.*

120 D. The court may assess costs and attorneys' fees against either party regardless of whether an order

121 of protection has been issued as a result of a full hearing.

122 E. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate
123 jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths,
124 the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing
125 violent or threatening acts or harassment against or contact or communication with or physical proximity
126 to another person, including any of the conditions specified in subsection A, shall be accorded full faith
127 and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided
128 reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person
129 against whom the order is sought to be enforced sufficient to protect such person's due process rights
130 and consistent with federal law. A person entitled to protection under such a foreign order may file the
131 order in any appropriate district court by filing with the court, an attested or exemplified copy of the
132 order. Upon such a filing, the clerk shall forward forthwith an attested copy of the order to the local
133 police department or sheriff's office which shall, upon receipt, enter the name of the person subject to
134 the order and other appropriate information required by the Department of State Police into the Virginia
135 Criminal Information Network system established and maintained by the Department pursuant to Chapter
136 2 (§ 52-12 et seq.) of Title 52.

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

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

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

150 H. No fees shall be charged for filing or serving petitions pursuant to this section.

151 I. As used in this section, "copy" includes a facsimile copy.