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HOUSE BILL NO. 974

Offered January 9, 2008

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A BILL to amend and reenact §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, 19.2-152.10, and 19.2-390 of the Code of Virginia, relating to protective orders; expiration; Virginia Criminal Information Network.

Patrons—Shannon and Dance

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, 19.2-152.10, and 19.2-390 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-253. Preliminary protective order.

A. Upon the motion of any person or upon the court's own motion, the court may issue a preliminary protective order, after a hearing, if necessary to protect a child's life, health, safety or normal development pending the final determination of any matter before the court. The order may require a child's parents, guardian, legal custodian, other person standing in loco parentis or other family or household member of the child to observe reasonable conditions of behavior for a specified length of time. These conditions shall include any one or more of the following:

1. To abstain from offensive conduct against the child, a family or household member of the child or any person to whom custody of the child is awarded;

2. To cooperate in the provision of reasonable services or programs designed to protect the child's life, health or normal development;

3. To allow persons named by the court to come into the child's home at reasonable times designated by the court to visit the child or inspect the fitness of the home and to determine the physical or emotional health of the child;

4. To allow visitation with the child by persons entitled thereto, as determined by the court;

5. To refrain from acts of commission or omission which tend to endanger the child's life, health or normal development; or

6. To refrain from such contact with the child or family or household members of the child, as the court may deem appropriate, including removal of such person from the residence of the child. However, prior to the issuance by the court of an order removing such person from the residence of the child, the petitioner must prove by a preponderance of the evidence that such person's probable future conduct would constitute a danger to the life or health of such child, and that there are no less drastic alternatives which could reasonably and adequately protect the child's life or health pending a final determination on the petition.

B. A preliminary protective order may be issued ex parte upon motion of any person or the court's own motion in any matter before the court, or upon petition. The motion or petition shall be supported by an affidavit or by sworn testimony in person before the judge or intake officer which establishes that the child would be subjected to an imminent threat to life or health to the extent that delay for the provision of an adversary hearing would be likely to result in serious or irreparable injury to the child's life or health. If an ex parte order is issued without an affidavit being presented, the court, in its order, shall state the basis upon which the order was entered, including a summary of the allegations made and the court's findings. Following the issuance of an ex parte order the court shall provide an adversary hearing to the affected parties within the shortest practicable time not to exceed five business days after the issuance of the order.

C. Prior to the hearing required by this section, notice of the hearing shall be given at least twenty-four hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian, or other person standing in loco parentis of the child, to any other family or household member of the child to whom the protective order may be directed and to the child if he or she is twelve years of age or older. The notice provided herein shall include (i) the time, date and place for the hearing and (ii) a specific statement of the factual circumstances which allegedly necessitate the issuance of a preliminary protective order.

D. All parties to the hearing shall be informed of their right to counsel pursuant to § 16.1-266.

E. At the hearing the child, his or her parents, guardian, legal custodian or other person standing in loco parentis and any other family or household member of the child to whom notice was given shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence

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59 on their own behalf.

60 F. If a petition alleging abuse or neglect of a child has been filed, at the hearing pursuant to this
61 section the court shall determine whether the allegations of abuse or neglect have been proven by a
62 preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order.
63 However, if, before such a finding is made, a person responsible for the care and custody of the child,
64 the child's guardian ad litem or the local department of social services objects to a finding being made
65 at the hearing, the court shall schedule an adjudicatory hearing to be held within thirty days of the date
66 of the initial preliminary protective order hearing. The adjudicatory hearing shall be held to determine
67 whether the allegations of abuse and neglect have been proven by a preponderance of the evidence.
68 Parties who are present at the hearing shall be given notice of the date set for the adjudicatory hearing
69 and parties who are not present shall be summoned as provided in § 16.1-263. The adjudicatory hearing
70 shall be held and an order may be entered, although a party to the hearing fails to appear and is not
71 represented by counsel, provided personal or substituted service was made on the person, or the court
72 determines that such person cannot be found, after reasonable effort, or in the case of a person who is
73 without the Commonwealth, the person cannot be found or his post office address cannot be ascertained
74 after reasonable effort.

75 Any preliminary protective order issued shall remain in full force and effect pending the adjudicatory
76 hearing.

77 G. If at the preliminary protective order hearing held pursuant to this section the court makes a
78 finding of abuse or neglect and a preliminary protective order is issued, a dispositional hearing shall be
79 held pursuant to § 16.1-278.2. Upon receipt of the order by a local law-enforcement agency for service,
80 the agency shall enter the name of the person subject to the order and other appropriate information
81 required by the Department of State Police into the Virginia Criminal Information Network established
82 and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. ~~Where practical,~~
83 ~~the~~ *The court may shall immediately enter and transfer information electronically to the Virginia*
84 *Criminal Information Network. A copy of the preliminary protective order shall be delivered*
85 *immediately to the primary law-enforcement agency responsible for service and entry of protective*
86 *orders, and it shall be served as soon as possible on the allegedly abusing person in person as provided*
87 *in § 16.1-264, and upon service, the agency making service shall enter the date and time of service into*
88 *the Virginia Criminal Information Network. The preliminary order shall specify a date for the*
89 *dispositional hearing. The dispositional hearing shall be scheduled at the time of the hearing pursuant to*
90 *this section, and shall be held within seventy-five 75 days of this hearing. If an adjudicatory hearing is*
91 *requested pursuant to subsection F, the dispositional hearing shall nonetheless be scheduled at the*
92 *hearing pursuant to this section. All parties present at the hearing shall be given notice of the date and*
93 *time scheduled for the dispositional hearing; parties who are not present shall be summoned to appear as*
94 *provided in § 16.1-263.*

95 H. Nothing in this section enables the court to remove a child from the custody of his or her parents,
96 guardian, legal custodian or other person standing in loco parentis, except as provided in § 16.1-278.2,
97 and no order hereunder shall be entered against a person over whom the court does not have
98 jurisdiction.

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

104 J. Violation of any order issued pursuant to this section shall constitute contempt of court.

105 K. Upon receipt of the order by a local law-enforcement agency for service, the agency shall enter
106 the name of the person subject to the order and other appropriate information required by the
107 Department of State Police into the Virginia Criminal Information Network established and maintained
108 by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. ~~Where feasible and practical, the~~
109 ~~The court may shall immediately enter and transfer information electronically to the Virginia Criminal~~
110 ~~Information Network. A copy of the preliminary protective order shall be delivered immediately by the~~
111 ~~court to the primary law-enforcement agency responsible for service and entry of protective orders, and~~
112 ~~it shall be served as soon as possible on the allegedly abusing person as provided in § 16.1-264, and~~
113 ~~upon service, the agency making service shall enter the date and time of service into the Virginia~~
114 ~~Criminal Information Network. The preliminary order shall specify a date for the full hearing.~~

115 Upon receipt of the return of service or other proof of service pursuant to subsection C of
116 § 16.1-264, the clerk shall forward forthwith an attested copy of the preliminary protective order to the
117 local police department or sheriff's office which shall, upon receipt, enter into the Virginia Criminal
118 Information Network any other information required by the State Police that was not previously entered.
119 *The court shall immediately enter and transfer information electronically to the Virginia Criminal*
120 *Information Network system and shall immediately deliver the attested copy of the protective order to*

the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt, the agency shall make any modifications for 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. If any information is determined to be incorrect by the entering agency, the agency shall contact the issuing court and ensure the protective order is appropriately corrected and the corrected information is entered into 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 Virginia Criminal Information Network as described above, and upon service, the agency making service shall enter the date and time of service into the Virginia Criminal Information Network system.

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

§ 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~~ *The court may shall immediately enter and transfer information electronically to the Virginia Criminal Information Network system. A copy of a preliminary protective order shall be delivered immediately by the court to the primary law-enforcement agency responsible for service and entry of protective orders, and it 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 15 days of the issuance of the preliminary order. If the respondent fails to appear at this hearing because the respondent was not personally served, the court may extend the protective order for a period not to exceed six months. The extended protective order shall be served as soon as possible on the respondent. 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 end of the day of 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 as described above.

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

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

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

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

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

§ 16.1-253.4. Emergency protective orders authorized in certain cases; penalty.

A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person.

B. When a law-enforcement officer or an allegedly abused person asserts under oath to a judge or magistrate, and on that assertion or other evidence the judge or magistrate (i) finds that a warrant for a violation of § 18.2-57.2 has been issued or issues a warrant for violation of § 18.2-57.2 and finds that there is probable danger of further acts of family abuse against a family or household member by the respondent or (ii) finds that reasonable grounds exist to believe that the respondent has committed family abuse and there is probable danger of a further such offense against a family or household member by the respondent, the judge or magistrate shall issue an ex parte emergency protective order, except if the respondent is a minor, an emergency protective order shall not be required, imposing one or more of the following conditions on the respondent:

1. Prohibiting acts of family abuse;

2. Prohibiting such contacts by the respondent with family or household members of the respondent as the judge or magistrate deems necessary to protect the safety of such persons; and

3. Granting the family or household member possession of the premises 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.

When the judge or magistrate considers the issuance of an emergency protective order pursuant to clause (i) of this subsection, he shall presume that there is probable danger of further acts of family abuse against a family or household member by the respondent unless the presumption is rebutted by the allegedly abused person.

C. An emergency protective order issued pursuant to this section shall expire ~~seventy-two hours after~~ *at the end of the third day following* issuance. If the expiration of the ~~seventy-two hour period~~ occurs at a time that the court is not in session, the emergency protective order shall be extended until ~~5 p.m. the~~ *the* end of the next business day that the juvenile and domestic relations district court is in session. When issuing an emergency protective order under this section, the judge or magistrate shall provide the protected person or the law-enforcement officer seeking the emergency protective order with the form for use in filing petitions pursuant to § 16.1-253.1 and written information regarding protective orders that shall include the telephone numbers of domestic violence agencies and legal referral sources on a form prepared by the Supreme Court. If these forms are provided to a law-enforcement officer, the officer may provide these forms to the protected person when giving the emergency protective order to the protected person. The respondent may at any time file a motion with the court requesting a hearing to dissolve or modify the order issued hereunder. The hearing on the motion shall be given precedence on the docket of the court.

D. A law-enforcement officer may request an emergency protective order pursuant to this section and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant to § 16.1-253.1 or § 16.1-279.1, may request the extension of an emergency protective order for an additional period of time not to exceed ~~seventy-two hours~~ *three days* after expiration of the original order. The request for an emergency protective order or extension of an order may be made orally, in person or by electronic means, and the judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate may issue an oral emergency protective order. An oral emergency protective order issued pursuant to this section shall be reduced to writing, by the

law-enforcement officer requesting the order or the magistrate on a preprinted form approved and provided by the Supreme Court of Virginia. The completed form shall include a statement of the grounds for the order asserted by the officer or the allegedly abused person.

E. 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~~ *The court or magistrate may shall immediately enter and transfer information electronically to the Virginia Criminal Information Network system. A copy of an emergency protective order issued pursuant to this section shall be delivered immediately by the court to the primary law-enforcement agency responsible for service and entry of protective orders, and it shall be served upon the respondent as soon as possible, and upon service, the agency making service shall enter the date and time of service into the Virginia Criminal Information Network system. One copy of the order shall be given to the allegedly abused person when it is issued, and one copy shall be filed with the written report required by § 19.2-81.3 C. The judge or magistrate who issues an oral order pursuant to an electronic request by a law-enforcement officer shall verify the written order to determine whether the officer who reduced it to writing accurately transcribed the contents of the oral order. The original copy shall be filed with the clerk of the juvenile and domestic relations district court within five business days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or modification order shall be forwarded and entered in the system as described above. Upon request, the clerk shall provide the allegedly abused person with information regarding the date and time of service.*

F. The availability of an emergency protective order shall not be affected by the fact that the family or household member left the premises to avoid the danger of family abuse by the respondent.

G. The issuance of an emergency protective order shall not be considered evidence of any wrongdoing by the respondent.

H. As used in this section, a "law-enforcement officer" means any (i) full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth and (ii) member of an auxiliary police force established pursuant to subsection B of § 15.2-1731. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

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

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

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

305 A1. If a protective order is issued pursuant to subsection A of this section, the court may also issue a
306 temporary child support order for the support of any children of the petitioner whom the respondent has
307 a legal obligation to support. Such order shall terminate upon the determination of support pursuant to
308 § 20-108.1.

309 B. The protective order may be issued for a specified period; however, unless otherwise authorized
310 by law, a protective order may not be issued under this section for a period longer than two years. *The*
311 *protective order shall expire at the end of the last day identified for the two-year period and if no date*
312 *is identified, it shall expire at the end of the two years following the date of issuance.* A copy of the
313 protective order shall be served on the respondent and provided to the petitioner as soon as possible.
314 *The clerk shall, upon receipt, forward forthwith an attested copy of the order to the local police*
315 *department or sheriff's office which shall, upon receipt, enter the name of the person subject to the order*
316 *and other appropriate information required by the Department of State Police into the Virginia Criminal*
317 *Information Network system established and maintained by the Department pursuant to Chapter 2*
318 *(§ 52-12 et seq.) of Title 52. Where practical, the* *The court may shall immediately enter and transfer*
319 *information electronically to the Virginia Criminal Information Network system and shall immediately*
320 *deliver the attested copy of the protective order to the primary law-enforcement agency responsible for*
321 *service and entry of protective orders. Upon receipt, the agency shall make any modifications for the*
322 *person subject to the order and other appropriate information required by the Department of State*
323 *Police into the Virginia Criminal Information Network system established and maintained by the*
324 *Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. If any information is determined to be*
325 *incorrect by the entering agency, the agency shall contact the issuing court and ensure that the*
326 *protective order is appropriately corrected and the corrected information is entered into the Virginia*
327 *Criminal Information Network system.* If the order is later dissolved or modified, a copy of the
328 dissolution or modification order shall also be attested, forwarded and entered in the system as described
329 above, and upon service, the agency making service shall enter the date and time of service into the
330 Virginia Criminal Information Network system.

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

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

335 E. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate
336 jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths,
337 the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing
338 violent or threatening acts or harassment against or contact or communication with or physical proximity
339 to another person, including any of the conditions specified in subsection A, shall be accorded full faith
340 and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided
341 reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person
342 against whom the order is sought to be enforced sufficient to protect such person's due process rights
343 and consistent with federal law. A person entitled to protection under such a foreign order may file the
344 order in any juvenile and domestic relations district court by filing with the court an attested or
345 exemplified copy of the order. Upon such a filing, the clerk shall forward forthwith an attested copy of
346 the order to the local police department or sheriff's office which shall, upon receipt, enter the name of
347 the person subject to the order and other appropriate information required by the Department of State
348 Police into the Virginia Criminal Information Network system established and maintained by the
349 Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. ~~Where practical, the~~ *The court may shall*
350 *immediately enter and transfer information electronically to the Virginia Criminal Information Network*
351 *system.*

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

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

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

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

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

§ 19.2-152.8. Emergency protective orders authorized in cases of stalking and acts of violence.

A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person.

B. When a law-enforcement officer, an allegedly stalked person or an alleged victim of a criminal offense resulting in a serious bodily injury to the alleged victim asserts under oath to a judge or magistrate that such person is being or has been subjected to stalking or a criminal offense resulting in a serious bodily injury to the alleged victim and on that assertion or other evidence the judge or magistrate finds that (i) there is probable danger of a further such offense being committed by the respondent against the alleged victim and (ii) a warrant for the arrest of the respondent has been issued, the judge or magistrate shall issue an ex parte emergency protective order imposing one or more of the following conditions on the respondent:

1. Prohibiting acts of violence or acts of stalking in violation of § 18.2-60.3;

2. Prohibiting such contacts by the respondent with the alleged victim of such crime or such person's family or household members as the judge or magistrate deems necessary to protect the safety of such persons; and

3. Such other conditions as the judge or magistrate deems necessary to prevent acts of stalking, or criminal offenses resulting in injury to person or property, or communication or other contact of any kind by the respondent.

C. An emergency protective order issued pursuant to this section shall expire ~~72 hours after~~ *at the end of the third day following* issuance. If the expiration of the 72-hour period occurs at a time that the court is not in session, the emergency protective order shall be extended until ~~5 p.m.~~ *the end* of the next business day that the court which issued the order is in session. The respondent 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.

D. A law-enforcement officer may request an emergency protective order pursuant to this section orally, in person or by electronic means, and the judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate may issue an oral emergency protective order. An oral emergency protective order issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the order or the magistrate, on a preprinted form approved and provided by the Supreme Court of Virginia. The completed form shall include a statement of the grounds for the order asserted by the officer or the alleged victim of such crime.

E. 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 or magistrate may~~ *The court or magistrate shall immediately enter and transfer* information electronically to the Virginia Criminal Information Network system. A copy of an emergency protective order issued pursuant to this section ~~shall be delivered immediately by the court to the primary law-enforcement agency responsible for service and entry of protective orders, and it shall be served upon the respondent as soon as possible, and upon service, the agency making service shall enter the date and time of service into the Virginia Criminal Information Network system.~~ One copy of the order shall be given to the alleged victim of such crime. The judge or magistrate who issues an oral order pursuant to an electronic request by a law-enforcement officer shall verify the written order to determine whether the officer who reduced it to writing accurately transcribed the contents of the oral order. The original copy shall be filed with the clerk of the appropriate district court within five business days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or modification order shall be forwarded and entered in the system as described above. Upon request, the clerk shall provide the alleged victim of such crime with information regarding the date and time of service.

F. The issuance of an emergency protective order shall not be considered evidence of any wrongdoing by the respondent.

G. As used in this section, a "law-enforcement officer" means any (i) person who is a full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth and (ii) member of an auxiliary police force established pursuant to subsection B of § 15.2-1731. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

H. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of

428 such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme
429 Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

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

431 J. No fee shall be charged for filing or serving any petition pursuant to this section.

432 § 19.2-152.9. Preliminary protective orders in cases of stalking and acts of violence.

433 A. Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable
434 period of time, subjected to stalking or a criminal offense resulting in a serious bodily injury to the
435 petitioner, and (ii) a warrant has been issued for the arrest of the alleged perpetrator of such act or acts,
436 the court may issue a preliminary protective order against the alleged perpetrator in order to protect the
437 health and safety of the petitioner or any family or household member of the petitioner. The order may
438 be issued in an ex parte proceeding upon good cause shown when the petition is supported by an
439 affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of stalking
440 or another criminal offense that may result in a serious bodily injury to the petitioner or evidence
441 sufficient to establish probable cause that stalking or a criminal offense resulting in a serious bodily
442 injury to the petitioner has recently occurred shall constitute good cause.

443 A preliminary protective order may include any one or more of the following conditions to be
444 imposed on the respondent:

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

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

449 3. Such other conditions as the court deems necessary to prevent acts of stalking, criminal offenses
450 that may result in injury to person or property, or communication or other contact of any kind by the
451 respondent.

452 B. Upon receipt of the order by a local law-enforcement agency for service, the agency shall enter
453 the name of the person subject to the order and other appropriate information required by the
454 Department of State Police into the Virginia Criminal Information Network system established and
455 maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. ~~Where practical, the~~
456 ~~The court may~~ *shall immediately enter and transfer information electronically to the Virginia Criminal*
457 *Information Network system. A copy of a preliminary protective order shall be delivered immediately by*
458 *the court to the primary law-enforcement agency responsible for service and entry of protective orders,*
459 *and it shall be served as soon as possible on the alleged stalker in person as provided in § 16.1-264, and*
460 *upon service, the agency making service shall enter the date and time of service into the Virginia*
461 *criminal information network system. The preliminary order shall specify a date for the full hearing. The*
462 *hearing shall be held within 15 days of the issuance of the preliminary order. However, upon motion of*
463 *the respondent and for good cause shown, the court may continue the hearing. The preliminary order*
464 *shall remain in effect until the end if the day of the hearing. Upon request after the order is issued, the*
465 *clerk shall provide the petitioner with a copy of the order and information regarding the date and time*
466 *of service. The order shall further specify that either party may at any time file a motion with the court*
467 *requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given*
468 *precedence on the docket of the court.*

469 Upon receipt of the return of service or other proof of service pursuant to subsection C of
470 § 16.1-264, the clerk shall forward forthwith an attested copy of the preliminary protective order to the
471 local police department or sheriff's office which shall, upon receipt, enter into the Virginia Criminal
472 Information Network system any other information required by the State Police which was not
473 previously entered. If the order is later dissolved or modified, a copy of the dissolution or modification
474 order shall also be attested, forwarded and entered into the Virginia Criminal Information Network
475 system as described above.

476 C. The preliminary order is effective upon personal service on the alleged perpetrator. Except as
477 otherwise provided in § 16.1-253.2, a violation of the order shall constitute contempt of court.

478 D. At a full hearing on the petition, the court may issue a protective order pursuant to § 19.2-152.10
479 if the court finds that the petitioner has proven the allegation of a criminal offense resulting in a serious
480 bodily injury to the petitioner or stalking by a preponderance of the evidence.

481 E. No fees shall be charged for filing or serving petitions pursuant to this section.

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

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

488 § 19.2-152.10. Protective order in cases of stalking and acts of violence.

489 A. The court may issue a protective order pursuant to this chapter to protect the health and safety of

the petitioner and family or household members of a petitioner upon (i) the issuance of a warrant for a criminal offense resulting in a serious bodily injury to the petitioner, or a violation of § 18.2-60.3, (ii) a hearing held pursuant to subsection D of § 19.2-152.9, or (iii) a conviction for a criminal offense resulting in a serious bodily injury to the petitioner, or a violation of § 18.2-60.3. 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 criminal offenses that may result in injury to person or property, or acts of stalking in violation of § 18.2-60.3;

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; and

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

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. *The protective order shall expire at the end of the last day identified for the two-year period and if no date is identified, it shall expire at the end of the two years following the date of issuance.* 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 shall immediately enter and transfer information electronically to the Virginia Criminal Information Network system and shall immediately deliver the attested copy of the protective order to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt, the agency shall make any modifications for 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. If any information is determined to be incorrect by the entering agency, the agency shall contact the issuing court and ensure that the protective order is appropriately corrected and the corrected information is entered into 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 into the system as described above and upon service, the agency making service shall enter the date and time of service into the Virginia Criminal Information Network system.*

C. Except as otherwise provided, a violation of a protective order issued under this section shall constitute contempt of court.

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 jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such person's due process rights and consistent with federal law. A person entitled to protection under such a foreign order may file the order in any appropriate district court by filing with the court, an attested or exemplified copy of the order. Upon such a filing, the clerk shall 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.

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

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

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

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

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

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace, clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by other agencies.

A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service of process upon, any person on charges resulting from an indictment, presentment or information, the arrest on *capias* or warrant for failure to appear, and the service of a warrant for another jurisdiction, on any of the following charges:

a. Treason;

b. Any felony;

c. Any offense punishable as a misdemeanor under Title 54.1; or

d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, except an arrest for a violation of § 18.2-119, Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, or any similar ordinance of any county, city or town, or (ii) under § 20-61.

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested. Effective January 1, 2006, the corresponding photograph of the individual arrested shall accompany the report. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau. Nothing in this section shall preclude each local law-enforcement agency from maintaining its own separate photographic database.

2. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until (i) a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court dismisses the proceeding pursuant to § 18.2-251; or (iii) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following the person's conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him committed to the custody of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

B. Within 72 hours following the receipt of (i) a warrant or *capias* for the arrest of any person on a charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the law-enforcement agency which received the warrant shall enter the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of birth, social security number and such other known information which the State Police or Federal Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the warrant or *capias* may transfer information electronically into VCIN. When the information is electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or *capias* to the local police department or sheriff's office. When criminal process has been ordered destroyed pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of any information relating to the destroyed criminal process from the VCIN and NCIC systems.

C. The clerk of each circuit court and district court shall make a *an electronic* report to the Central Criminal Records Exchange of (i) any dismissal, indefinite postponement or continuance, charge still pending due to mental incompetency or incapacity, *nolle prosequi*, acquittal, or conviction of, including any sentence imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection A, including any action which may have resulted from an indictment, presentment or information, and (ii) any adjudication of delinquency based upon an act which, if committed by an adult, would require fingerprints to be filed pursuant to subsection A. In the case of

offenses not required to be reported to the Exchange by subsection A, the reports of any of the foregoing dispositions shall be filed by the law-enforcement agency making the arrest with the arrest record required to be maintained by § 15.2-1722. Upon conviction of any person, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, for an offense for which registration is required as defined in § 9.1-902, the clerk shall within seven days of sentencing submit a report to the Sex Offender and Crimes Against Minors Registry. The report to the Registry shall include the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction for which registration is required, his date of birth, social security number, last known address, and specific reference to the offense for which he was convicted. No report of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry. In addition, each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or capias into the VCIN system.

D. In addition to those offenses enumerated in subsection A of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints, photographs, and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining correctional status information, as required by the regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange. The reports to the Exchange shall include any commitment to or release or escape from a state or local correctional facility, including commitment to or release from a parole or probation agency.

F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to the Exchange by the office of the Secretary of the Commonwealth.

G. Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section, including those reports made to the Registry, shall adopt procedures reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than 30 days after occurrence of the disposition or correctional change of status; and (ii) to report promptly any correction, deletion, or revision of the information.

H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information.

As used in this section, the term:

~~chief~~ "Chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling.

"Electronic report" means a report transmitted to, or otherwise forwarded to, the Central Criminal Records Exchange in an electronic format approved by the Exchange. The report shall contain the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction, his date of birth, social security number, last known address, and specific reference to the offense including the code section and any subsection, the Virginia crime code for the offense, and the offense tracking number for the offense for which he was convicted.