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**HOUSE BILL NO. 1842**

Offered January 14, 2009

Prefiled January 12, 2009

*A BILL to amend and reenact § 16.1-253.4 of the Code of Virginia, relating to authority of a magistrate or judge to issue an emergency protective order.*

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Patron—Griffith

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 16.1-253.4 of the Code of Virginia is amended and reenacted as follows:**

§ 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 or 18.2-67.3 has been issued or issues a warrant for violation of § 18.2-57.2 or 18.2-67.3 and finds that there is probable danger of further acts of family abuse or sexual battery 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 or sexual battery 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 or sexual battery 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 at the end of the third day following issuance. If the expiration occurs at a time that the court is not in session, the emergency protective order shall be extended until 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 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.

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59 E. The court or magistrate shall forthwith, but in all cases no later than the end of the business day  
60 on which the order was issued, enter and transfer identifying information provided to the court or  
61 magistrate electronically to the Virginia Criminal Information Network. A copy of an emergency  
62 protective order issued pursuant to this section and an addendum containing any such identifying  
63 information shall be forwarded forthwith to the primary law-enforcement agency responsible for service  
64 and entry of protective orders. Upon receipt of the order and addendum by the primary law-enforcement  
65 agency, the agency shall forthwith verify and enter any modification as necessary to the identifying  
66 information and other appropriate information required by the Department of State Police into the  
67 Virginia Criminal Information Network established and maintained by the Department pursuant to  
68 Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent and  
69 due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit  
70 court shall forthwith forward an attested copy of the order and an addendum containing identifying  
71 information to the primary law-enforcement agency providing service and entry of protective orders and  
72 upon receipt of the order and addendum, the primary law-enforcement agency shall enter the name of  
73 the person subject to the order and other appropriate information required by the Department of State  
74 Police into the Virginia Criminal Network established and maintained by the Department pursuant to  
75 Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the respondent. Upon  
76 service, the agency making service shall enter the date and time of service and other appropriate  
77 information required by the Department of State Police into the Virginia Criminal Information Network  
78 and make due return to the court. One copy of the order shall be given to the allegedly abused person  
79 when it is issued, and one copy shall be filed with the written report required by § 19.2-81.3 C. The  
80 judge or magistrate who issues an oral order pursuant to an electronic request by a law-enforcement  
81 officer shall verify the written order to determine whether the officer who reduced it to writing  
82 accurately transcribed the contents of the oral order. The original copy shall be filed with the clerk of  
83 the juvenile and domestic relations district court within five business days of the issuance of the order.  
84 If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be  
85 attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of  
86 protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall  
87 forthwith verify and enter any modification as necessary to the identifying information and other  
88 appropriate information required by the Department of State Police into the Virginia Criminal  
89 Information Network as described above and the order shall be served forthwith and due return made to  
90 the court. Upon request, the clerk shall provide the allegedly abused person with information regarding  
91 the date and time of service.

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

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

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

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

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

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

111 L. If any identifying information in the addendum is determined to be incorrect by the entering  
112 agency, the agency shall enter the corrected information into the Virginia Criminal Information Network.

113 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
114 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**  
115 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**  
116 **periods of commitment to the custody of the Department of Juvenile Justice.**