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HOUSE BILL NO. 1842

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 28, 2009)

(Patron Prior to Substitute—Delegate Griffith)

A *BILL to amend and reenact §§ 19.2-152.8, 19.2-152.9, and 19.2-152.10 of the Code of Virginia, relating to authority of a magistrate or judge to issue an emergency protective order.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-152.8, 19.2-152.9, and 19.2-152.10 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-152.8. Emergency protective orders authorized in cases of stalking, sexual battery, 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 *sexual battery in violation of § 18.2-67.4, aggravated sexual battery in violation of § 18.2-67.3* or 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, *sexual battery in violation of § 18.2-67.4, aggravated sexual battery in violation of § 18.2-67.3*, 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, *acts of sexual battery*, 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 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 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. The court or magistrate shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer identifying information provided to the court or magistrate electronically to the Virginia Criminal Information Network. A copy of an emergency protective order issued pursuant to this section and an addendum containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order and addendum by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order and an addendum containing identifying information to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order and addendum, the primary law-enforcement agency shall enter the name of

60 the person subject to the order and other appropriate information required by the Department of State
61 Police into the Virginia Criminal Information Network established and maintained by the Department
62 pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the
63 respondent. Upon service, the agency making service shall enter the date and time of service and other
64 appropriate information required into the Virginia Criminal Information Network and make due return to
65 the court. One copy of the order shall be given to the alleged victim of such crime. The judge or
66 magistrate who issues an oral order pursuant to an electronic request by a law-enforcement officer shall
67 verify the written order to determine whether the officer who reduced it to writing accurately transcribed
68 the contents of the oral order. The original copy shall be filed with the clerk of the appropriate district
69 court within five business days of the issuance of the order. If the order is later dissolved or modified, a
70 copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary
71 law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the
72 order by the primary law-enforcement agency, the agency shall forthwith verify and enter any
73 modification as necessary to the identifying information and other appropriate information required by
74 the Department of State Police into the Virginia Criminal Information Network as described above and
75 the order shall be served forthwith and due return made to the court. Upon request, the clerk shall
76 provide the alleged victim of such crime with information regarding the date and time of service.

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

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

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

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

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

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

95 § 19.2-152.9. Preliminary protective orders in cases of stalking, sexual battery and acts of violence.

96 A. Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable
97 period of time, subjected to stalking, *sexual battery in violation of § 18.2-67.4, aggravated sexual*
98 *battery in violation of § 18.2-67.3*, or a criminal offense resulting in a serious bodily injury to the
99 petitioner, and (ii) a warrant has been issued for the arrest of the alleged perpetrator of such act or acts,
100 the court may issue a preliminary protective order against the alleged perpetrator in order to protect the
101 health and safety of the petitioner or any family or household member of the petitioner. The order may
102 be issued in an ex parte proceeding upon good cause shown when the petition is supported by an
103 affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of stalking
104 or another criminal offense that may result in a serious bodily injury to the petitioner or evidence
105 sufficient to establish probable cause that stalking or a criminal offense resulting in a serious bodily
106 injury to the petitioner has recently occurred shall constitute good cause.

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

109 1. Prohibiting criminal offenses that may result in injury to person or property, *acts of sexual battery*,
110 or acts of stalking in violation of § 18.2-60.3;

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

113 3. Such other conditions as the court deems necessary to prevent acts of stalking, *acts of sexual*
114 *battery*, criminal offenses that may result in injury to person or property, or communication or other
115 contact of any kind by the respondent.

116 B. The court shall forthwith, but in all cases no later than the end of the business day on which the
117 order was issued, enter and transfer identifying information provided to the court electronically to the
118 Virginia Criminal Information Network. A copy of a preliminary protective order and an addendum
119 containing any such identifying information shall be forwarded forthwith to the primary law-enforcement
120 agency responsible for service and entry of protective orders. Upon receipt of the order and addendum
121 by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as

necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the alleged ~~stalker~~ *perpetrator* in person as provided in § 16.1-264, and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order and an addendum containing identifying information to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order and addendum, the primary law-enforcement 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 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the alleged ~~stalker~~ *perpetrator* in person as provided in § 16.1-264. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. 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 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 forthwith forward an attested copy of the preliminary protective order to primary law-enforcement agency and the agency shall forthwith verify and enter any modification as necessary into the Virginia Criminal Information Network as described above. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court.

C. The preliminary order is effective upon personal service on the alleged perpetrator. 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 § 19.2-152.10 if the court finds that the petitioner has proven the allegation of a criminal offense resulting in a serious bodily injury to the petitioner or stalking by a preponderance of the evidence.

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

F. 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.

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

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

§ 19.2-152.10. Protective order in cases of stalking, sexual battery and acts of violence.

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 *sexual battery in violation of § 18.2-67.4, aggravated sexual battery in violation of § 18.2-67.3*, 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 *sexual battery in violation of § 18.2-67.4, aggravated sexual battery in violation of § 18.2-67.3*, 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, *acts of sexual battery*, 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

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

186 B. The protective order may be issued for a specified period; however, unless otherwise authorized
187 by law, a protective order may not be issued under this section for a period longer than two years. The
188 protective order shall expire at the end of the last day identified for the two-year period and if no date
189 is identified, it shall expire at the end of the two years following the date of issuance. A copy of the
190 protective order shall be served on the respondent and provided to the petitioner as soon as possible.
191 The court shall forthwith, but in all cases no later than the end of the business day on which the order
192 was issued, enter and transfer identifying information provided to the court electronically to the Virginia
193 Criminal Information Network and shall forthwith forward the attested copy of the protective order and
194 an addendum containing any such identifying information to the primary law-enforcement agency
195 responsible for service and entry of protective orders. Upon receipt of the order and addendum by the
196 primary law-enforcement agency, the agency shall forthwith verify and enter any modification as
197 necessary to the identifying information and other appropriate information required by the Department of
198 State Police into the Virginia Criminal Information Network established and maintained by the
199 Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith
200 upon the respondent and due return made to the court. However, if the order is issued by the circuit
201 court, the clerk of the circuit court shall forthwith forward an attested copy of the order and an
202 addendum containing identifying information to the primary law-enforcement agency providing service
203 and entry of protective orders and upon receipt of the order and addendum, the primary law-enforcement
204 agency shall enter the name of the person subject to the order and other appropriate information required
205 by the Department of State Police into the Virginia Criminal Information Network established and
206 maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be
207 served forthwith on the respondent. Upon service, the agency making service shall enter the date and
208 time of service and other appropriate information required into the Virginia Criminal Information
209 Network and make due return to the court. If the order is later dissolved or modified, a copy of the
210 dissolution or modification order shall also be attested, forwarded forthwith to the primary
211 law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the
212 order by the primary law-enforcement agency, the agency shall forthwith verify and enter any
213 modification as necessary to the identifying information and other appropriate information required by
214 the Department of State Police into the Virginia Criminal Information Network as described above and
215 the order shall be served forthwith and due return made to the court.

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

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

220 E. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate
221 jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths,
222 the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing
223 violent or threatening acts or harassment against or contact or communication with or physical proximity
224 to another person, including any of the conditions specified in subsection A, shall be accorded full faith
225 and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided
226 reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person
227 against whom the order is sought to be enforced sufficient to protect such person's due process rights
228 and consistent with federal law. A person entitled to protection under such a foreign order may file the
229 order in any appropriate district court by filing with the court, an attested or exemplified copy of the
230 order. Upon such a filing, the clerk shall forthwith forward an attested copy of the order to the primary
231 law-enforcement agency responsible for service and entry of protective orders which shall, upon receipt,
232 enter the name of the person subject to the order and other appropriate information required by the
233 Department of State Police into the Virginia Criminal Information Network established and maintained
234 by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may
235 transfer information electronically to the Virginia Criminal Information Network.

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

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

244 G. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's

245 office, nor any employee of them, may disclose, except among themselves, the residential address,
246 telephone number, or place of employment of the person protected by the order or that of the family of
247 such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme
248 Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.
249 H. No fees shall be charged for filing or serving petitions pursuant to this section.
250 I. As used in this section, "copy" includes a facsimile copy.
251 J. If any identifying information in the addendum is determined to be incorrect by the entering
252 agency, the agency shall enter the corrected information into the Virginia Criminal Information Network.