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HOUSE BILL NO. 1857

Offered January 14, 2009

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A BILL to amend and reenact §§ 16.1-253.2, 18.2-60.4, and 19.2-152.10 of the Code of Virginia, relating to protective orders; issuance upon conviction for certain crimes.

Patron—Shannon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.2, 18.2-60.4, and 19.2-152.10 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-253.2. Violation of provisions of protective orders; penalty.

In addition to any other penalty provided by law, any person who violates any provision of a protective order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.14, 16.1-279.1 or subsection B of § 20-103, which prohibits such person from going or remaining upon land, buildings or premises or from further acts of family abuse, or which prohibits contacts between the respondent and the respondent's family or household member as the court deems appropriate is guilty of a Class 1 misdemeanor. The punishment for any person convicted of a second offense of violating a protective order, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, shall include a mandatory minimum term of confinement of 60 days. Any person convicted of a third or subsequent offense of violating a protective order, when the offense is committed within 20 years of the first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence is guilty of a Class 6 felony and the punishment shall include a mandatory minimum term of confinement of six months.

If the respondent commits an assault and battery upon any party protected by the protective order, resulting in serious bodily injury to the party, he is guilty of a Class 6 felony. Any person who violates such a protective order by furtively entering the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty provided by law.

Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § 16.1-279.1 for a specified period not exceeding two years from the date of conviction; *however, if the person is confined to a state or local correctional facility upon conviction under this section, the period of the person's confinement shall not be included in calculating the duration of the protective order.*

§ 18.2-60.4. Violation of stalking protective orders; penalty.

Any person who violates any provision of a protective order issued pursuant to §§ 19.2-152.8, 19.2-152.9 or § 19.2-152.10 is guilty of a Class 1 misdemeanor. Conviction hereunder shall bar a finding of contempt for the same act. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § 19.2-152.10 for a specified period not exceeding two years from the date of conviction; *however, if the person is confined to a state or local correctional facility upon conviction under this section, the period of the person's confinement shall not be included in calculating the duration of the protective order.*

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

A. The court (i) 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)~~ (a) 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)~~ or (b) a hearing held pursuant to subsection D of § 19.2-152.9, ~~or (iii)~~ and (ii) shall issue a protective order upon 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

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59 property, or acts of stalking, communication or other contact of any kind by the respondent.

60 B. The protective order may be issued for a specified period; however, unless otherwise authorized
61 by law, a protective order may not be issued under this section for a period longer than two years. *If a*
62 *protective order is issued under clause (ii) of subsection A and the respondent is confined to a state or*
63 *local correctional facility upon conviction for a crime resulting in the issuance of such protective order,*
64 *the period of the respondent's confinement shall not be included in calculating the duration of the*
65 *protective order.* The protective order shall expire at the end of the last day identified for the two-year
66 period and if no date is identified, it shall expire at the end of the two years following the date of
67 issuance. A copy of the protective order shall be served on the respondent and provided to the petitioner
68 as soon as possible. The court shall forthwith, but in all cases no later than the end of the business day
69 on which the order was issued, enter and transfer identifying information provided to the court
70 electronically to the Virginia Criminal Information Network and shall forthwith forward the attested
71 copy of the protective order and an addendum containing any such identifying information to the
72 primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of
73 the order and addendum by the primary law-enforcement agency, the agency shall forthwith verify and
74 enter any modification as necessary to the identifying information and other appropriate information
75 required by the Department of State Police into the Virginia Criminal Information Network established
76 and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall
77 be served forthwith upon the respondent and due return made to the court. However, if the order is
78 issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the
79 order and an addendum containing identifying information to the primary law-enforcement agency
80 providing service and entry of protective orders and upon receipt of the order and addendum, the
81 primary law-enforcement agency shall enter the name of the person subject to the order and other
82 appropriate information required by the Department of State Police into the Virginia Criminal
83 Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et
84 seq.) of Title 52 and the order shall be served forthwith on the respondent. Upon service, the agency
85 making service shall enter the date and time of service and other appropriate information required into
86 the Virginia Criminal Information Network and make due return to the court. If the order is later
87 dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded
88 forthwith to the primary law-enforcement agency responsible for service and entry of protective orders,
89 and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify
90 and enter any modification as necessary to the identifying information and other appropriate information
91 required by the Department of State Police into the Virginia Criminal Information Network as described
92 above and the order shall be served forthwith and due return made to the court.

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

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

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

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

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

121 G. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's
122 office, nor any employee of them, may disclose, except among themselves, the residential address,
123 telephone number, or place of employment of the person protected by the order or that of the family of
124 such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme
125 Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.
126 H. No fees shall be charged for filing or serving petitions pursuant to this section.
127 I. As used in this section, "copy" includes a facsimile copy.
128 J. If any identifying information in the addendum is determined to be incorrect by the entering
129 agency, the agency shall enter the corrected information into the Virginia Criminal Information Network.