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HOUSE BILL NO. 1857

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 30, 2009)

(Patron Prior to Substitute—Delegate Shannon)

A *BILL to amend and reenact §§ 16.1-253.1 and 16.1-279.1 of the Code of Virginia, relating to protective orders; issuance upon conviction of certain crimes.*

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-253.1 and 16.1-279.1 of the Code of Virginia are amended and reenacted as follows:

§ 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. *Evidence that the petitioner has been subjected to family abuse within a reasonable time and evidence of immediate and present danger of family abuse may be established by a showing that (i) the allegedly abusing person is incarcerated and is to be released from incarceration within 30 days following the petition or has been released from incarceration within 30 days prior to the petition, (ii) the crime for which the allegedly abusing person was convicted and incarcerated involved family abuse against the petitioner, and (iii) the allegedly abusing person has made or attempted to make some unwanted, threatening or offensive contact with the petitioner while he was incarcerated, exhibiting a renewed threat to the petitioner of family abuse.*

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. The court 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 electronically to the Virginia Criminal Information Network. A copy of a preliminary protective order 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 on the allegedly abusing person 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

60 order and other appropriate information required by the Department of State Police into the Virginia
61 Criminal Information Network established and maintained by the Department pursuant to Chapter 2
62 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in
63 person as provided in § 16.1-264. Upon service, the agency making service shall enter the date and time
64 of service and other appropriate information required by the Department of State Police into the Virginia
65 Criminal Information Network and make due return to the court. The preliminary order shall specify a
66 date for the full hearing. The hearing shall be held within 15 days of the issuance of the preliminary
67 order. If the respondent fails to appear at this hearing because the respondent was not personally served,
68 the court may extend the protective order for a period not to exceed six months. The extended protective
69 order shall be served forthwith on the respondent. However, upon motion of the respondent and for
70 good cause shown, the court may continue the hearing. The preliminary order shall remain in effect until
71 the hearing. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of
72 the order and information regarding the date and time of service. The order shall further specify that
73 either party may at any time file a motion with the court requesting a hearing to dissolve or modify the
74 order. The hearing on the motion shall be given precedence on the docket of the court.

75 Upon receipt of the return of service or other proof of service pursuant to subsection C of
76 § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to the
77 primary law-enforcement agency, and the agency shall forthwith verify and enter any modification as
78 necessary into the Virginia Criminal Information Network as described above. If the order is later
79 dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded
80 forthwith to the primary law-enforcement agency responsible for service and entry of protective orders,
81 and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify
82 and enter any modification as necessary to the identifying information and other appropriate information
83 required by the Department of State Police into the Virginia Criminal Information Network as described
84 above and the order shall be served forthwith and due return made to the court.

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

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

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

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

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

97 H. If any identifying information in the addendum is determined to be incorrect by the entering
98 agency, the agency shall enter the corrected information into the Virginia Criminal Information Network.
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100 § 16.1-279.1. Protective order in cases of family abuse.

101 A. In cases of family abuse, *including any case involving an incarcerated or recently incarcerated*
102 *respondent against whom a preliminary protective order has been issued pursuant to § 16.2-253.1*, the
103 court may issue a protective order to protect the health and safety of the petitioner and family or
104 household members of the petitioner. A protective order issued under this section may include any one
105 or more of the following conditions to be imposed on the respondent:

106 1. Prohibiting acts of family abuse;

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

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

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

114 5. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner
115 alone or jointly owned by the parties to the exclusion of the respondent; however, no such grant of
116 possession or use shall affect title to the vehicle;

117 6. Requiring that the respondent provide suitable alternative housing for the petitioner and, if
118 appropriate, any other family or household member and where appropriate, requiring the respondent to
119 pay deposits to connect or restore necessary utility services in the alternative housing provided;

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

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

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

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 court 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 electronically to the Virginia Criminal Information Network and shall forthwith forward the attested copy of the protective order and an addendum containing any such identifying information 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 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 upon the respondent. 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. 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. Except as otherwise provided in § 16.1-253.2, 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 juvenile and domestic relations district court by filing with the court an attested or exemplified copy of the order. Upon such a filing, the clerk shall forthwith forward an attested copy of the order to the primary law-enforcement agency responsible for service and entry of protective orders 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 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network.

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.

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

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

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

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

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