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HOUSE BILL NO. 1876

Offered January 12, 2011

Prefiled January 11, 2011

A BILL to amend and reenact §§ 17.1-272, 19.2-152.8, 19.2-152.9, and 19.2-152.10 of the Code of Virginia, relating to protective orders; grounds.

Patrons—Filler-Corn, Armstrong and Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-272, 19.2-152.8, 19.2-152.9, and 19.2-152.10 of the Code of Virginia are amended and reenacted as follows:

§ 17.1-272. Process and service fees generally.

A. The fee for process and service in the following instances shall be \$12:

1. Service on any person, firm or corporation, an order, notice, summons or any other civil process, except as herein otherwise provided, and for service on any person, firm, or corporation any process when the body is not taken and making a return thereof, except that no fee shall be charged for service pursuant to § 2.2-4022.

2. Summoning a witness or garnishee on an attachment.

3. Service on any person of an attachment or other process under which the body is taken and making a return thereon.

4. Service of any order of court not otherwise provided for, except that no fees shall be charged for protective orders issued pursuant to Chapter 11 (§ 16.1-226 et seq.) of Title 16.1.

5. Making a return of a writ of fieri facias where no levy is made or forthcoming bond is taken.

6. Summoning a witness in any case in which custody or visitation of a minor child or children is at issue.

B. The fees for process and service in the following instances shall be \$25:

1. Service and publication of any notice of a publicly-advertised public sale.

2. Service of a writ of possession, except that there shall be an additional fee of \$12 for each additional defendant.

3. Levying upon current money, bank notes, goods or chattels of a judgment debtor pursuant to § 8.01-478.

4. Service of a declaration in ejectment on any person, firm or corporation, except that there shall be an additional fee of \$12 for each additional defendant.

5. Levying distress warrant or an attachment.

6. Levying an execution.

C. The process and service fee for serving any papers returnable out of state shall be \$75, except no fees shall be charged for the service of papers in connection with the prosecution of any misdemeanor or felony domestic violence offense, or in connection with the filing, issuance, registration, or service of a ~~protection~~ protective order or a petition for ~~protection~~ a protective order, to protect a victim of domestic violence, stalking or sexual assault. A victim of domestic violence, stalking or sexual assault shall not bear the costs associated with the filing of criminal charges against the offender, ~~or~~ and no victim shall bear the costs associated with the filing, issuance, registration, or service of a warrant, ~~protection~~ protective order, petition for a ~~protection~~ protective order, or witness subpoena, issued inside or outside the Commonwealth.

D. The fees set out in this section shall be allowable for services provided by such officers in the circuit and district courts.

CHAPTER 9.1.**PROTECTIVE ORDERS FOR STALKING.**

§ 19.2-152.8. Emergency protective orders.

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 or a person 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

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59 ~~resulting in a serious conduct that causes such person to have a reasonable apprehension of death,~~
60 ~~sexual assault, or bodily injury to the alleged victim~~ and on that assertion or other evidence the judge or
61 magistrate finds that (i) there is probable danger of a further such ~~offense being committed~~ conduct
62 directed by the respondent against the ~~alleged victim~~ and such person or (ii) a warrant for the arrest of
63 the respondent has been issued for any offense based on the conduct described in this subsection, the
64 judge or magistrate shall issue an ex parte emergency protective order imposing one or more of the
65 following conditions on the respondent:

66 1. Prohibiting ~~acts of violence, acts of sexual battery, or acts of stalking in violation of § 18.2-60.3~~
67 ~~conduct that causes the protected person to have a reasonable apprehension of death, sexual assault, or~~
68 ~~bodily injury;~~

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

72 3. Such other conditions as the judge or magistrate deems necessary to prevent ~~acts of stalking, acts~~
73 ~~of sexual battery, or criminal offenses resulting~~ criminal offenses or conduct that may result in injury to
74 person or property, or communication or other contact of any kind by the respondent.

75 C. An emergency protective order issued pursuant to this section shall expire at 11:59 p.m. on the
76 third day following issuance. If the expiration occurs on a day that the court is not in session, the
77 emergency protective order shall be extended until 11:59 p.m. on the next day that the court which
78 issued the order is in session. The respondent may at any time file a motion with the court requesting a
79 hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the
80 docket of the court.

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

88 E. The court or magistrate shall forthwith, but in all cases no later than the end of the business day
89 on which the order was issued, enter and transfer electronically to the Virginia Criminal Information
90 Network the respondent's identifying information and the name, date of birth, sex, and race of each
91 protected person provided to the court or magistrate. A copy of an emergency protective order issued
92 pursuant to this section containing any such identifying information shall be forwarded forthwith to the
93 primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of
94 the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any
95 modification as necessary to the identifying information and other appropriate information required by
96 the Department of State Police into the Virginia Criminal Information Network established and
97 maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be
98 served forthwith upon the respondent and due return made to the court. However, if the order is issued
99 by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order
100 containing the respondent's identifying information and the name, date of birth, sex, and race of each
101 protected person provided to the court to the primary law-enforcement agency providing service and
102 entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter
103 the name of the person subject to the order and other appropriate information required by the
104 Department of State Police into the Virginia Criminal Information Network established and maintained
105 by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served
106 forthwith upon the respondent. Upon service, the agency making service shall enter the date and time of
107 service and other appropriate information required into the Virginia Criminal Information Network and
108 make due return to the court. One copy of the order shall be given to the ~~alleged victim of such crime~~
109 ~~protected person~~. The judge or magistrate who issues an oral order pursuant to an electronic request by
110 a law-enforcement officer shall verify the written order to determine whether the officer who reduced it
111 to writing accurately transcribed the contents of the oral order. The original copy shall be filed with the
112 clerk of the appropriate district court within five business days of the issuance of the order. If the order
113 is later dissolved or modified, a copy of the dissolution or modification order shall also be attested,
114 forwarded forthwith to the primary law-enforcement agency responsible for service and entry of
115 protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall
116 forthwith verify and enter any modification as necessary to the identifying information and other
117 appropriate information required by the Department of State Police into the Virginia Criminal
118 Information Network as described above and the order shall be served forthwith and due return made to
119 the court. Upon request, the clerk shall provide the ~~alleged victim of such crime~~ protected person with
120 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 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.

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

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

§ 19.2-152.9. Preliminary protective orders.

A. Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable period of time, 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~~ *conduct that causes the petitioner to have a reasonable apprehension of death, sexual assault, or bodily injury to the petitioner, and* or (ii) a warrant has been issued for the arrest of the alleged perpetrator ~~of such act or acts for any offense based on the conduct described in this subsection~~, the court may issue a preliminary protective order against the alleged perpetrator 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 ~~stalking or another criminal offense~~ *conduct* that may result in a ~~serious death, sexual assault, or~~ *serious death, sexual assault, or* bodily injury to the petitioner or evidence sufficient to establish probable cause that ~~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~~ *conduct* ~~constitutes a criminal offense~~ *based on the conduct described in this subsection* 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 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~~ *conduct that causes the petitioner to have a reasonable apprehension of death, sexual assault, or bodily injury;*

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

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

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 electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court. A copy of a preliminary protective order 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 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 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 containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, 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 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, sexual battery in violation of § 18.2-67.4, aggravated sexual battery in violation of § 18.2-67.3, or stalking that the petitioner is or has been subjected to conduct that causes the petitioner to have a reasonable apprehension of death, sexual assault, or bodily injury 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.

§ 19.2-152.10. Protective order.

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) *finding that the petitioner has proven the allegation that the petitioner is or has been subjected to conduct that causes the petitioner to have a reasonable apprehension of death, sexual assault, or bodily injury*, (ii) the issuance of a warrant or 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 any offense based on the conduct described in this subsection, (ii) or (iii) 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 conduct that causes the petitioner to have a reasonable apprehension of death, sexual assault, or bodily injury;

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 or conduct that may result in injury to person or property, acts of sexual battery, or acts of stalking, or communication or other contact of any kind by the respondent.

B. The protective order may be issued for a specified period of time up to a maximum of two years. The protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Prior to the expiration of the protective order, a petitioner may file a written motion requesting a hearing to extend the order. Proceedings to extend a protective order shall be given precedence on the docket of the court. The court may extend the protective order

for a period not longer than two years to protect the health and safety of the petitioner or persons who are family or household members of the petitioner at the time the request for an extension is made. The extension of the protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Nothing herein shall limit the number of extensions that may be requested or issued.

C. 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 electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court and shall forthwith forward the attested copy of the protective order and containing any such identifying information to the primary law-enforcement agency responsible for service and entry of protective orders. 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 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 containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, 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 respondent. Upon service, the agency making service shall enter the date and time of service and other appropriate information required 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.

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

E. 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.

F. 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 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.

G. 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.

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

305 office, nor any employee of them, may disclose, except among themselves, the residential address,
306 telephone number, or place of employment of the person protected by the order or that of the family of
307 such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme
308 Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

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

310 J. As used in this section:

311 "Copy" includes a facsimile copy; and

312 "Protective order" includes an initial, modified or extended protective order.

313 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
314 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
315 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
316 **874 of the Acts of Assembly of 2010 requires the Virginia Criminal Sentencing Commission to**
317 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**
318 **necessary appropriation is \$0 for periods of commitment to the custody of the Department of**
319 **Juvenile Justice.**