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SENATE BILL NO. 208

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 8, 2010)

(Patron Prior to Substitute—Senator Barker)

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 protective orders; penalty.

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 and other criminal behavior.

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 or an 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, or an assault 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, or acts of assault;

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, acts of sexual battery, or criminal offenses resulting in injury to person or property, or acts of assault or communication or other contact of any kind by the respondent.

C. An emergency protective order issued pursuant to this section shall expire at 11:59 p.m. on the third day following issuance. If the expiration occurs on a day that the court is not in session, the emergency protective order shall be extended until 11:59 p.m. on the next 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 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 or magistrate. A copy of an emergency protective order issued pursuant to this section 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 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

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

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

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

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

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

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

95 § 19.2-152.9. Preliminary protective orders in cases of stalking and other criminal behavior.

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 battery
98 in violation of § 18.2-67.3, ~~or~~ a criminal offense resulting in a ~~serious~~ bodily injury to the petitioner, ~~or~~
99 ~~assault~~ and (ii) a warrant has been issued for the arrest of the alleged perpetrator of such act or acts, the
100 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, sexual battery in violation of § 18.2-67.4, aggravated
106 sexual battery in violation of § 18.2-67.3, ~~or~~ a criminal offense resulting in a ~~serious~~ bodily injury to the
107 petitioner, ~~or assault~~ has recently occurred shall constitute good cause.

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

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

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

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

117 B. The court shall forthwith, but in all cases no later than the end of the business day on which the
118 order was issued, enter and transfer electronically to the Virginia Criminal Information Network the
119 respondent's identifying information and the name, date of birth, sex, and race of each protected person
120 provided to the court. A copy of a preliminary protective order containing any such identifying
121 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~~ *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~~ *or* stalking, *or assault* 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 in cases of stalking and other criminal behavior.

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~~ *serious* bodily injury to the petitioner, ~~or~~ *or* a violation of § 18.2-60.3, *or assault*, (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~~ *serious* bodily injury to the petitioner, ~~or~~ *or* a violation of § 18.2-60.3, *or assault*. 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~~ *or* acts of stalking in violation of § 18.2-60.3, *or acts of assault*;

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

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

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

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

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

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

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

244 F. Either party may at any time file a written motion with the court requesting a hearing to dissolve

245 or modify the order. Proceedings to modify or dissolve a protective order shall be given precedence on
246 the docket of the court.

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

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

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