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HOUSE BILL NO. 1033

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact §§ 16.1-279.1, 17.1-513, and 19.2-152.10 of the Code of Virginia, relating to permanent protective orders.

Patron—McClellan

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-279.1, 17.1-513, and 19.2-152.10 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-279.1. Protective order in cases of family abuse.

A. In cases of family abuse, including any case involving an incarcerated or recently incarcerated respondent against whom a preliminary protective order has been issued pursuant to § 16.1-253.1, the court may issue a protective order to protect the health and safety of the petitioner and family or household members of the petitioner. 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 acts of family abuse or criminal offenses that result in injury to person or property;

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;

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

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

5. 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 respondent; however, no such grant of possession or use shall affect title to the vehicle;

6. Requiring that the respondent provide suitable alternative housing for the petitioner and, if appropriate, 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;

7. Ordering the respondent to participate in treatment, counseling or other programs as the court 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 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. If the petitioner was a member of the respondent's family or household at the time the initial protective order was issued, 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, *including a circuit court if the circuit court issued the order*, 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 containing any such identifying information to the primary law-enforcement agency responsible for service and entry of protective

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59 orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith
60 verify and enter any modification as necessary to the identifying information and other appropriate
61 information required by the Department of State Police into the Virginia Criminal Information Network
62 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and
63 the order shall be served forthwith upon the respondent and due return made to the court. However, if
64 the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested
65 copy of the order containing the respondent's identifying information and the name, date of birth, sex,
66 and race of each protected person provided to the court to the primary law-enforcement agency
67 providing service and entry of protective orders and upon receipt of the order, the primary
68 law-enforcement agency shall enter the name of the person subject to the order and other appropriate
69 information required by the Department of State Police into the Virginia Criminal Information Network
70 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and
71 the order shall be served forthwith upon the respondent. Upon service, the agency making service shall
72 enter the date and time of service and other appropriate information required by the Department of State
73 Police into the Virginia Criminal Information Network and make due return to the court. If the order is
74 later dissolved or modified, a copy of the dissolution or modification order shall also be attested,
75 forwarded forthwith to the primary law-enforcement agency responsible for service and entry of
76 protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall
77 forthwith verify and enter any modification as necessary to the identifying information and other
78 appropriate information required by the Department of State Police into the Virginia Criminal
79 Information Network as described above and the order shall be served forthwith and due return made to
80 the court.

81 D. Except as otherwise provided in § 16.1-253.2, a violation of a protective order issued under this
82 section shall constitute contempt of court.

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

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

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

106 G. Either party may at any time file a written motion with the court requesting a hearing to dissolve
107 or modify the order. Proceedings to dissolve or modify a protective order shall be given precedence on
108 the docket of the court.

109 H. As used in this section:

110 "Copy" includes a facsimile copy; and

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

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

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

118 § 17.1-513. Jurisdiction of circuit courts.

119 The circuit courts shall have jurisdiction of proceedings by quo warranto or information in the nature
120 of quo warranto and to issue writs of mandamus, prohibition and certiorari to all inferior tribunals

created or existing under the laws of ~~this~~ *the* Commonwealth, and to issue writs of mandamus in all matters of proceedings arising from or pertaining to the action of the boards of supervisors or other governing bodies of the several counties for which such courts are respectively held or in other cases in which it may be necessary to prevent the failure of justice and in which mandamus may issue according to the principles of common law. They shall have appellate jurisdiction in all cases, civil and criminal, in which an appeal may, as provided by law, be taken from the judgment or proceedings of any inferior tribunal.

They shall have original and general jurisdiction of all civil cases, except cases upon claims to recover personal property or money not of greater value than \$100, exclusive of interest, and except such cases as are assigned to some other tribunal; also in all cases for the recovery of fees in excess of \$100; penalties or cases involving the right to levy and collect toll or taxes or the validity of an ordinance or bylaw of any corporation; and also, of all cases, civil or criminal, in which an appeal may be had to the Supreme Court.

They shall have jurisdiction to hear motions filed for the purpose of modifying, dissolving, or extending a protective order pursuant to § 16.1-279.1 or 19.2-152.10 if the circuit court issued such order, unless the circuit court remanded the matter to the jurisdiction of the juvenile and domestic relations district court in accordance with § 16.1-297. They shall also have original jurisdiction of all indictments for felonies and of presentments, informations and indictments for misdemeanors.

They shall have appellate jurisdiction of all cases, civil and criminal, in which an appeal, writ of error or supersedeas may, as provided by law, be taken to or allowed by such courts, or the judges thereof, from or to the judgment or proceedings of any inferior tribunal. They shall also have jurisdiction of all other matters, civil and criminal, made cognizable therein by law and when a motion to recover money is allowed in such tribunals, they may hear and determine the same, although it is to recover less than \$100.

§ 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) the issuance of a petition or warrant for, or a conviction of, any criminal offense resulting from the commission of an act of violence, force, or threat or (ii) a hearing held pursuant to subsection D of § 19.2-152.9. 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 acts of violence, force, or threat or criminal offenses that may result in injury to person or property;

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 (i) acts of violence, force, or threat, (ii) criminal offenses that may result in injury to person or property, or (iii) 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, *including a circuit court if the circuit court issued the order*, 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 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. No fees shall be charged for filing or serving petitions pursuant to this section.

J. As used in this section:

"Copy" includes a facsimile copy; and

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

2. That the provisions of this act that require any circuit court clerk to make an electronic report to the Virginia Criminal Information Network shall become effective on July 1, 2013, as to any circuit court clerks not currently using the Statewide Case Management System operated and maintained by the Executive Secretary of the Supreme Court. Until July 1, 2013, such clerks shall forthwith forward the protective order to the primary law-enforcement agency providing service and entry of protective orders for entry into the Virginia Criminal Information Network.