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HOUSE BILL NO. 716

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact §§ 15.2-1731, 16.1-253.4, 19.2-81.3, and 19.2-152.8 of the Code of Virginia, relating to auxiliary police forces; minimum training standards.

Patron—Kilgore

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1731, 16.1-253.4, 19.2-81.3, and 19.2-152.8 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-1731. Establishment, etc., authorized; powers, authority and immunities generally.

A. Localities, for the further preservation of the public peace, safety and good order of the community, may establish, equip and maintain auxiliary police forces. *When called into service as provided in this section, the members of which when called into service as hereinafter provided any such auxiliary police force shall have all the powers and, authority and all the immunities of constables at common law.*

B. Localities also may establish, equip and maintain auxiliary police forces which have all the powers and authority and all the immunities of full-time law-enforcement officers, if all provided such forces members have met the training requirements established by the Department of Criminal Justice Services under § 9.1-101. Any auxiliary officer employed prior to July 1, 1987, shall be exempted from any initial training requirement, except that any such law-enforcement department in that jurisdiction. No auxiliary police officer shall not be permitted to carry or use a firearm while serving as an auxiliary police officer unless such officer has met the firearms training requirements established in accordance with basic and in-service training standards for law-enforcement officers as prescribed defined by the Criminal Justice Services Board in accordance with § 9.1-114.

§ 16.1-253.4. Emergency protective orders authorized in certain cases; penalty.

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 or an allegedly abused person asserts under oath to a judge or magistrate, and on that assertion or other evidence the judge or magistrate (i) finds that a warrant for a violation of § 18.2-57.2 has been issued or issues a warrant for violation of § 18.2-57.2 and finds that there is probable danger of further acts of family abuse against a family or household member by the respondent or (ii) finds that reasonable grounds exist to believe that the respondent has committed family abuse and there is probable danger of a further such offense against a family or household member by the respondent, the judge or magistrate shall issue an ex parte emergency protective order, except if the respondent is a minor, an emergency protective order shall not be required, imposing one or more of the following conditions 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 family or household members of the respondent as the judge or magistrate deems necessary to protect the safety of such persons; and

3. Granting the family or household member possession of the premises 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.

When the judge or magistrate considers the issuance of an emergency protective order pursuant to clause (i), he shall presume that there is probable danger of further acts of family abuse against a family or household member by the respondent unless the presumption is rebutted by the allegedly abused person.

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 juvenile and domestic relations district court is in session. When issuing an emergency protective order under this section, the judge or magistrate shall provide the protected person or the law-enforcement officer seeking the emergency protective order with the form for use in filing petitions pursuant to § 16.1-253.1 and written information regarding protective orders that shall include the telephone numbers of domestic violence agencies and legal referral sources on a form prepared by the Supreme Court. If these forms

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59 are provided to a law-enforcement officer, the officer may provide these forms to the protected person
60 when giving the emergency protective order to the protected person. The respondent may at any time
61 file a motion with the court requesting a hearing to dissolve or modify the order issued hereunder. The
62 hearing on the motion shall be given precedence on the docket of the court.

63 D. A law-enforcement officer may request an emergency protective order pursuant to this section
64 and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant
65 to § 16.1-253.1 or 16.1-279.1, may request the extension of an emergency protective order for an
66 additional period of time not to exceed three days after expiration of the original order. The request for
67 an emergency protective order or extension of an order may be made orally, in person or by electronic
68 means, and the judge of a circuit court, general district court, or juvenile and domestic relations district
69 court or a magistrate may issue an oral emergency protective order. An oral emergency protective order
70 issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the
71 order or the magistrate on a preprinted form approved and provided by the Supreme Court of Virginia.
72 The completed form shall include a statement of the grounds for the order asserted by the officer or the
73 allegedly abused person.

74 E. The court or magistrate shall forthwith, but in all cases no later than the end of the business day
75 on which the order was issued, enter and transfer electronically to the Virginia Criminal Information
76 Network the respondent's identifying information and the name, date of birth, sex, and race of each
77 protected person provided to the court or magistrate. A copy of an emergency protective order issued
78 pursuant to this section containing any such identifying information shall be forwarded forthwith to the
79 primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of
80 the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any
81 modification as necessary to the identifying information and other appropriate information required by
82 the Department of State Police into the Virginia Criminal Information Network established and
83 maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be
84 served forthwith upon the respondent and due return made to the court. However, if the order is issued
85 by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order
86 containing the respondent's identifying information and the name, date of birth, sex, and race of each
87 protected person provided to the court to the primary law-enforcement agency providing service and
88 entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter
89 the name of the person subject to the order and other appropriate information required by the
90 Department of State Police into the Virginia Criminal Network established and maintained by the
91 Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith
92 on the respondent. Upon service, the agency making service shall enter the date and time of service and
93 other appropriate information required by the Department of State Police into the Virginia Criminal
94 Information Network and make due return to the court. One copy of the order shall be given to the
95 allegedly abused person when it is issued, and one copy shall be filed with the written report required
96 by subsection D of § 19.2-81.3. The judge or magistrate who issues an oral order pursuant to an
97 electronic request by a law-enforcement officer shall verify the written order to determine whether the
98 officer who reduced it to writing accurately transcribed the contents of the oral order. The original copy
99 shall be filed with the clerk of the juvenile and domestic relations district court within five business
100 days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or
101 modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency
102 responsible for service and entry of protective orders, and upon receipt of the order by the primary
103 law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the
104 identifying information and other appropriate information required by the Department of State Police
105 into the Virginia Criminal Information Network as described above and the order shall be served
106 forthwith and due return made to the court. Upon request, the clerk shall provide the allegedly abused
107 person with information regarding the date and time of service.

108 F. The availability of an emergency protective order shall not be affected by the fact that the family
109 or household member left the premises to avoid the danger of family abuse by the respondent.

110 G. The issuance of an emergency protective order shall not be considered evidence of any
111 wrongdoing by the respondent.

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

119 I. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's
120 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.

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

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

§ 19.2-81.3. Arrest without a warrant authorized in cases of assault and battery against a family or household member and stalking and for violations of protective orders; procedure, etc.

A. Any law-enforcement officer, as defined in § 19.2-81, may arrest without a warrant for an alleged violation of § 18.2-57.2, 18.2-60.4, or 16.1-253.2 regardless of whether such violation was committed in his presence, if such arrest is based on probable cause or upon personal observations or the reasonable complaint of a person who observed the alleged offense or upon personal investigation.

B. A law-enforcement officer having probable cause to believe that a violation of § 18.2-57.2 or 16.1-253.2 has occurred shall arrest and take into custody the person he has probable cause to believe, based on the totality of the circumstances, was the predominant physical aggressor unless there are special circumstances which would dictate a course of action other than an arrest. The standards for determining who is the predominant physical aggressor shall be based on the following considerations: (i) who was the first aggressor, (ii) the protection of the health and safety of family and household members, (iii) prior complaints of family abuse by the allegedly abusing person involving the family or household members, (iv) the relative severity of the injuries inflicted on persons involved in the incident, (v) whether any injuries were inflicted in self-defense, (vi) witness statements, and (vii) other observations.

C. A law-enforcement officer having probable cause to believe that a violation of § 18.2-60.4 has occurred that involves physical aggression shall arrest and take into custody the person he has probable cause to believe, based on the totality of the circumstances, was the predominant physical aggressor unless there are special circumstances which would dictate a course of action other than an arrest. The standards for determining who is the predominant physical aggressor shall be based on the following considerations: (i) who was the first aggressor, (ii) the protection of the health and safety of the person to whom the protective order was issued and the person's family and household members, (iii) prior acts of violence, force, or threat, as defined in § 19.2-152.7:1, by the person against whom the protective order was issued against the person protected by the order or the protected person's family or household members, (iv) the relative severity of the injuries inflicted on persons involved in the incident, (v) whether any injuries were inflicted in self-defense, (vi) witness statements, and (vii) other observations.

D. Regardless of whether an arrest is made, the officer shall file a written report with his department, which shall state whether any arrests were made, and if so, the number of arrests, specifically including any incident in which he has probable cause to believe family abuse has occurred, and, where required, including a complete statement in writing that there are special circumstances that would dictate a course of action other than an arrest. The officer shall provide the allegedly abused person or the person protected by an order issued pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, both orally and in writing, information regarding the legal and community resources available to the allegedly abused person or person protected by the order. Upon request of the allegedly abused person or person protected by the order, the department shall make a summary of the report available to the allegedly abused person or person protected by the order.

E. In every case in which a law-enforcement officer makes an arrest under this section for a violation of § 18.2-57.2, he shall petition for an emergency protective order as authorized in § 16.1-253.4 when the person arrested and taken into custody is brought before the magistrate, except if the person arrested is a minor, a petition for an emergency protective order shall not be required. Regardless of whether an arrest is made, if the officer has probable cause to believe that a danger of acts of family abuse exists, the law-enforcement officer shall seek an emergency protective order under § 16.1-253.4, except if the suspected abuser is a minor, a petition for an emergency protective order shall not be required.

F. A law-enforcement officer investigating any complaint of family abuse, including but not limited to assault and battery against a family or household member shall, upon request, transport, or arrange for the transportation of an abused person to a hospital or safe shelter, or to appear before a magistrate. Any local law-enforcement agency may adopt a policy requiring an officer to transport or arrange for transportation of an abused person as provided in this subsection.

G. The definition of "family or household member" in § 16.1-228 applies to this section.

H. As used in this section, a "law-enforcement officer" means (i) any 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 this Commonwealth and (ii) any 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

182 sheriff's office.

183 § 19.2-152.8. Emergency protective orders authorized.

184 A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or
185 magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in
186 order to protect the health or safety of any person.

187 B. When a law-enforcement officer or an alleged victim asserts under oath to a judge or magistrate
188 that such person is being or has been subjected to an act of violence, force, or threat and on that
189 assertion or other evidence the judge or magistrate finds that (i) there is probable danger of a further
190 such act being committed by the respondent against the alleged victim or (ii) a petition or warrant for
191 the arrest of the respondent has been issued for any criminal offense resulting from the commission of
192 an act of violence, force, or threat, the judge or magistrate shall issue an ex parte emergency protective
193 order imposing one or more of the following conditions on the respondent:

194 1. Prohibiting acts of violence, force, or threat or criminal offenses resulting in injury to person or
195 property;

196 2. Prohibiting such contacts by the respondent with the alleged victim or such person's family or
197 household members as the judge or magistrate deems necessary to protect the safety of such persons;
198 and

199 3. Such other conditions as the judge or magistrate deems necessary to prevent (i) acts of violence,
200 force, or threat, (ii) criminal offenses resulting in injury to person or property, or (iii) communication or
201 other contact of any kind by the respondent.

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

208 D. A law-enforcement officer may request an emergency protective order pursuant to this section
209 and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant
210 to § 19.2-152.9 or 19.2-152.10, may request the extension of an emergency protective order for an
211 additional period of time not to exceed three days after expiration of the original order. The request for
212 an emergency protective order or extension of an order may be made orally, in person or by electronic
213 means, and the judge of a circuit court, general district court, or juvenile and domestic relations district
214 court or a magistrate may issue an oral emergency protective order. An oral emergency protective order
215 issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the
216 order or the magistrate, on a preprinted form approved and provided by the Supreme Court of Virginia.
217 The completed form shall include a statement of the grounds for the order asserted by the officer or the
218 alleged victim of such crime.

219 E. The court or magistrate shall forthwith, but in all cases no later than the end of the business day
220 on which the order was issued, enter and transfer electronically to the Virginia Criminal Information
221 Network the respondent's identifying information and the name, date of birth, sex, and race of each
222 protected person provided to the court or magistrate. A copy of an emergency protective order issued
223 pursuant to this section containing any such identifying information shall be forwarded forthwith to the
224 primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of
225 the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any
226 modification as necessary to the identifying information and other appropriate information required by
227 the Department of State Police into the Virginia Criminal Information Network established and
228 maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be
229 served forthwith upon the respondent and due return made to the court. However, if the order is issued
230 by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order
231 containing the respondent's identifying information and the name, date of birth, sex, and race of each
232 protected person provided to the court to the primary law-enforcement agency providing service and
233 entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter
234 the name of the person subject to the order and other appropriate information required by the
235 Department of State Police into the Virginia Criminal Information Network established and maintained
236 by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served
237 forthwith upon the respondent. Upon service, the agency making service shall enter the date and time of
238 service and other appropriate information required into the Virginia Criminal Information Network and
239 make due return to the court. One copy of the order shall be given to the alleged victim of such crime.
240 The judge or magistrate who issues an oral order pursuant to an electronic request by a law-enforcement
241 officer shall verify the written order to determine whether the officer who reduced it to writing
242 accurately transcribed the contents of the oral order. The original copy shall be filed with the clerk of
243 the appropriate district court within five business days of the issuance of the order. 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. Upon request, the clerk shall provide the alleged victim of such crime with 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.