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HOUSE BILL NO. 770

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact § 19.2-152.8 of the Code of Virginia, relating to protective orders against law-enforcement officers.

Patron—Landes

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-152.8 of the Code of Virginia is amended and reenacted as follows:**

§ 19.2-152.8. Emergency protective orders authorized.

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 alleged victim asserts under oath to a judge or magistrate that such person is being or has been subjected to an act of violence, force, or threat and on that assertion or other evidence the judge or magistrate finds that (i) there is probable danger of a further such act being committed by the respondent against the alleged victim or (ii) a petition or warrant for the arrest of the respondent has been issued for any criminal offense resulting from the commission of an act of violence, force, or threat, 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, force, or threat or criminal offenses resulting in injury to person or property;

2. Prohibiting such contacts by the respondent with the alleged victim 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 (i) acts of violence, force, or threat, (ii) criminal offenses resulting in injury to person or property, or (iii) 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 and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant to § 19.2-152.9 or 19.2-152.10, may request the extension of an emergency protective order for an additional period of time not to exceed three days after expiration of the original order. The request for an emergency protective order or extension of an order may be made 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

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

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

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

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

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

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

96 K. *No protective order shall be issued pursuant to this section against a law-enforcement officer for*
97 *any action arising out of the lawful performance of his duties unless just cause for the issuance of the*
98 *protective order has been found after an investigation conducted by an appropriate law-enforcement*
99 *agency with the authority to determine that just cause exists for the issuance of the protective order.*
100 *Nothing in this subsection shall preclude a petitioner from obtaining a protective order against a*
101 *law-enforcement officer pursuant to § 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, or subsection B of*
102 *20-103.*