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SENATE BILL NO. 71

Offered January 8, 2014

Prefiled December 19, 2013

A BILL to amend and reenact §§ 16.1-253.4, 19.2-18, and 19.2-81.3 of the Code of Virginia, relating to arrest for domestic assault; emergency protective orders; definition of law-enforcement officer.

 Patron—Stuart

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.4, 19.2-18, and 19.2-81.3 of the Code of Virginia are amended and reenacted as follows:

§ 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 the allegedly abused person or family or household members of the allegedly abused person 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 are provided to a law-enforcement officer, the officer may provide these forms to the protected person when giving the emergency protective order to the protected person. The respondent may at any time file a motion with the court requesting a hearing to dissolve or modify the order issued hereunder. 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 § 16.1-253.1 or 16.1-279.1, 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

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59 allegedly abused person.

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

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

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

98 H. As used in this section, a "law-enforcement officer" means any (i) full-time or part-time employee
99 of a police department or sheriff's office which is part of or administered by the Commonwealth or any
100 political subdivision thereof and who is responsible for the prevention and detection of crime and the
101 enforcement of the penal, traffic, or highway laws of the Commonwealth and (ii) member of an
102 auxiliary police force established pursuant to § 15.2-1731. Part-time employees are compensated officers
103 who are not full-time employees as defined by the employing police department or sheriff's office
104 person authorized to make an arrest for a criminal offense, including special conservators of the peace.

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

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

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

112 **§ 19.2-18. Powers and duties generally.**

113 Every conservator of the peace shall have authority to arrest without a warrant in such instances as
114 are set out in §§ 19.2-19 and 19.2-81, and 19.2-81.3. Upon making an arrest without a warrant, the
115 conservator of the peace shall proceed in accordance with the provisions of § 19.2-22 or § 19.2-82 as the
116 case may be.

117 **§ 19.2-81.3. Arrest without a warrant authorized in cases of assault and battery against a
118 family or household member and stalking and for violations of protective orders; procedure, etc.**

119 A. Any law-enforcement officer with the powers of arrest under subsection A of § 19.2-81 may arrest
120 without a warrant for an alleged violation of § 18.2-57.2, 18.2-60.4, or 16.1-253.2 regardless of whether

121 such violation was committed in his presence, if such arrest is based on probable cause or upon personal
122 observations or the reasonable complaint of a person who observed the alleged offense or upon personal
123 investigation.

124 B. A law-enforcement officer having probable cause to believe that a violation of § 18.2-57.2 or
125 16.1-253.2 has occurred shall arrest and take into custody the person he has probable cause to believe,
126 based on the totality of the circumstances, was the predominant physical aggressor unless there are
127 special circumstances which would dictate a course of action other than an arrest. The standards for
128 determining who is the predominant physical aggressor shall be based on the following considerations:
129 (i) who was the first aggressor, (ii) the protection of the health and safety of family and household
130 members, (iii) prior complaints of family abuse by the allegedly abusing person involving the family or
131 household members, (iv) the relative severity of the injuries inflicted on persons involved in the
132 incident, (v) whether any injuries were inflicted in self-defense, (vi) witness statements, and (vii) other
133 observations.

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

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

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

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

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

168 H. As used in this section, a "law-enforcement officer" means ~~(i) any full-time or part-time employee~~
169 ~~of a police department or sheriff's office which is part of or administered by the Commonwealth or any~~
170 ~~political subdivision thereof, and any campus police officer appointed under Chapter 17 (§ 23-232 et~~
171 ~~seq.) of Title 23, and who is responsible for the prevention and detection of crime and the enforcement~~
172 ~~of the penal, traffic or highway laws of this Commonwealth and (ii) any member of an auxiliary police~~
173 ~~force established pursuant to § 15.2-1731. Part-time employees are compensated officers who are not~~
174 ~~full-time employees as defined by the employing police department or sheriff's office any person~~
175 *authorized to make an arrest for a criminal offense, including special conservators of the peace.*