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## SENATE BILL NO. 721

Offered January 22, 2016

A *BILL to amend and reenact §§ 9.1-116.1, 16.1-279.1, and 19.2-152.10 of the Code of Virginia, relating to the Virginia Sexual and Domestic Violence Victim Fund; protective orders, civil penalty.*

Patron—Lewis

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-116.1, 16.1-279.1, and 19.2-152.10 of the Code of Virginia are amended and reenacted as follows:

§ 9.1-116.1. *Virginia Sexual and Domestic Violence Victim Fund; purpose; guidelines.*

A. There is created the Virginia Sexual and Domestic Violence Victim Fund as a special nonreverting fund to be administered by the Department of Criminal Justice Services to support the prosecution of domestic violence cases and to provide victim services.

B. The Department shall adopt guidelines, the purpose of which shall be to make funds available to (i) local attorneys for the Commonwealth for the purpose of funding the cost of additional attorneys or to further dedicate existing resources to prosecute felonies and misdemeanors involving domestic violence, sexual violence, sexual abuse, stalking and family abuse, and (ii) law-enforcement authorities or appropriate programs, including civil legal assistance, to assist in protecting and providing necessary services to victims of and children affected by domestic violence, sexual abuse, stalking and family abuse. *Such services shall include financial support for the creation and maintenance of local domestic violence shelters.*

C. A portion of the sum collected pursuant to § 16.1-69.48:1 as specified in that section and civil penalties collected pursuant to §§ 16.1-279.1 and 19.2-152.10 shall be deposited into the state treasury to the credit of this Fund in addition to any other monies appropriated, allocated or received specifically for such purpose. *Moneys collected through civil penalties pursuant to §§ 16.1-279.1 and 19.2-152.10 shall be used to provide financial support for the establishment and maintenance of local domestic violence shelters.* The Fund shall be distributed according to grant procedures adopted pursuant to this section and shall be established on the books of the Comptroller. Any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund.

D. The Department shall establish a grant procedure to govern funds awarded for this purpose.

§ 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 and enjoining the respondent from terminating any insurance, registration, or taxes on the motor vehicle and directing the respondent to maintain the insurance, registration, and taxes, as appropriate; 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;

8. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such

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59 petitioner meets the definition of owner in § 3.2-6500; and

60 9. Any other relief necessary for the protection of the petitioner and family or household members of  
61 the petitioner, including a provision for temporary custody or visitation of a minor child.

62 A1. If a protective order is issued pursuant to subsection A, the court may also issue a temporary  
63 child support order for the support of any children of the petitioner whom the respondent has a legal  
64 obligation to support. Such order shall terminate upon the determination of support pursuant to  
65 § 20-108.1.

66 B. The protective order may be issued for a specified period of time up to a maximum of two years.  
67 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  
68 of the two-year period if no date is specified. Prior to the expiration of the protective order, a petitioner  
69 may file a written motion requesting a hearing to extend the order. Proceedings to extend a protective  
70 order shall be given precedence on the docket of the court. If the petitioner was a member of the  
71 respondent's family or household at the time the initial protective order was issued, the court may extend  
72 the protective order for a period not longer than two years to protect the health and safety of the  
73 petitioner or persons who are family or household members of the petitioner at the time the request for  
74 an extension is made. The extension of the protective order shall expire at 11:59 p.m. on the last day  
75 specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Nothing herein  
76 shall limit the number of extensions that may be requested or issued.

77 C. A copy of the protective order shall be served on the respondent and provided to the petitioner as  
78 soon as possible. The court, including a circuit court if the circuit court issued the order, shall forthwith,  
79 but in all cases no later than the end of the business day on which the order was issued, enter and  
80 transfer electronically to the Virginia Criminal Information Network the respondent's identifying  
81 information and the name, date of birth, sex, and race of each protected person provided to the court  
82 and shall forthwith forward the attested copy of the protective order containing any such identifying  
83 information to the primary law-enforcement agency responsible for service and entry of protective  
84 orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith  
85 verify and enter any modification as necessary to the identifying information and other appropriate  
86 information required by the Department of State Police into the Virginia Criminal Information Network  
87 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and  
88 the order shall be served forthwith upon the respondent and due return made to the court. Upon service,  
89 the agency making service shall enter the date and time of service and other appropriate information  
90 required by the Department of State Police into the Virginia Criminal Information Network and make  
91 due return to the court. If the order is later dissolved or modified, a copy of the dissolution or  
92 modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency  
93 responsible for service and entry of protective orders, and upon receipt of the order by the primary  
94 law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the  
95 identifying information and other appropriate information required by the Department of State Police  
96 into the Virginia Criminal Information Network as described above and the order shall be served  
97 forthwith and due return made to the court.

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

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

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

118 Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy  
119 available of any foreign order filed with that court. A law-enforcement officer may, in the performance  
120 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 dissolve or modify a protective order shall be given precedence on the docket of the court.

H. As used in this section:

"Copy" includes a facsimile copy; and

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

I. 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.

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

*K. Whenever a protective order is issued pursuant to this section, the court shall assess a \$50 civil penalty payable by the respondent and credited to the Virginia Sexual and Domestic Violence Victim Fund.*

#### **§ 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;

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; and

4. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such petitioner meets the definition of owner in § 3.2-6500.

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. 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

182 appropriate information required by the Department of State Police into the Virginia Criminal  
183 Information Network as described above and the order shall be served forthwith and due return made to  
184 the court.

185 D. Except as otherwise provided, a violation of a protective order issued under this section shall  
186 constitute contempt of court.

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

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

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

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

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

218 I. No fees shall be charged for filing or serving petitions pursuant to this section.

219 J. As used in this section:

220 "Copy" includes a facsimile copy; and

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

222 K. *Whenever a protective order is issued pursuant to this section, the court shall assess a \$50 civil*  
223 *penalty payable by the respondent and credited to the Virginia Sexual and Domestic Violence Victim*  
224 *Fund.*