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HOUSE BILL NO. 262

Offered January 10, 2018

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A BILL to amend and reenact §§ 16.1-253.1 and 16.1-279.1 of the Code of Virginia, relating to protective orders; family abuse; cellular telephone numbers and service plans.

Patrons—Miyares and Lopez

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.1 and 16.1-279.1 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-253.1. Preliminary protective orders in cases of family abuse; confidentiality.

A. Upon the filing of a petition alleging that the petitioner is or has been, within a reasonable period of time, subjected to family abuse, the court may issue a preliminary protective order against an allegedly abusing person in order to protect the health and safety of the petitioner or any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred shall constitute good cause. Evidence that the petitioner has been subjected to family abuse within a reasonable time and evidence of immediate and present danger of family abuse may be established by a showing that (i) the allegedly abusing person is incarcerated and is to be released from incarceration within 30 days following the petition or has been released from incarceration within 30 days prior to the petition, (ii) the crime for which the allegedly abusing person was convicted and incarcerated involved family abuse against the petitioner, and (iii) the allegedly abusing person has made threatening contact with the petitioner while he was incarcerated, exhibiting a renewed threat to the petitioner of family abuse.

A preliminary protective order may include any one or more of the following conditions to be imposed on the allegedly abusing person:

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 premises occupied by the parties to the exclusion of the allegedly abusing person; 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 a premises that the petitioner has been granted possession of pursuant to subdivision 3 or, where appropriate, ordering the respondent to restore utility services to such premises.
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 allegedly abusing person; however, no such grant of possession or use shall affect title to the vehicle.
6. Requiring that the allegedly abusing person provide suitable alternative housing for the petitioner and 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. 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.
8. Granting the petitioner and, where appropriate, any other family or household member exclusive rights to and use of a cellular telephone number utilized by the parties to the exclusion of the respondent.
9. Enjoining the respondent from terminating any cellular telephone service plan containing the cellular telephone number to which the petitioner or any other family or household member was granted exclusive rights to and use of pursuant to subdivision 8 or, where appropriate, ordering the respondent to restore or reinstate such terminated service plan.

10. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner.

B. The court 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

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59 provided to the court. A copy of a preliminary protective order containing any such identifying
60 information shall be forwarded forthwith to the primary law-enforcement agency responsible for service
61 and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the
62 agency shall forthwith verify and enter any modification as necessary to the identifying information and
63 other appropriate information required by the Department of State Police into the Virginia Criminal
64 Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et
65 seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as
66 provided in § 16.1-264 and due return made to the court. However, if the order is issued by the circuit
67 court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the
68 respondent's identifying information and the name, date of birth, sex, and race of each protected person
69 provided to the court to the primary law-enforcement agency providing service and entry of protective
70 orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the
71 person subject to the order and other appropriate information required by the Department of State Police
72 into the Virginia Criminal Information Network established and maintained by the Department pursuant
73 to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly
74 abusing person in person as provided in § 16.1-264. Upon service, the agency making service shall enter
75 the date and time of service and other appropriate information required by the Department of State
76 Police into the Virginia Criminal Information Network and make due return to the court. The
77 preliminary order shall specify a date for the full hearing. The hearing shall be held within 15 days of
78 the issuance of the preliminary order. If the respondent fails to appear at this hearing because the
79 respondent was not personally served, or if personally served was incarcerated and not transported to the
80 hearing, the court may extend the protective order for a period not to exceed six months. The extended
81 protective order shall be served forthwith on the respondent. However, upon motion of the respondent
82 and for good cause shown, the court may continue the hearing. The preliminary order shall remain in
83 effect until the hearing. Upon request after the order is issued, the clerk shall provide the petitioner with
84 a copy of the order and information regarding the date and time of service. The order shall further
85 specify that either party may at any time file a motion with the court requesting a hearing to dissolve or
86 modify the order. The hearing on the motion shall be given precedence on the docket of the court.

87 Upon receipt of the return of service or other proof of service pursuant to subsection C of
88 § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to the
89 primary law-enforcement agency, and the agency shall forthwith verify and enter any modification as
90 necessary into the Virginia Criminal Information Network as described above. If the order is later
91 dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded
92 forthwith to the primary law-enforcement agency responsible for service and entry of protective orders,
93 and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify
94 and enter any modification as necessary to the identifying information and other appropriate information
95 required by the Department of State Police into the Virginia Criminal Information Network as described
96 above and the order shall be served forthwith and due return made to the court.

97 C. The preliminary order is effective upon personal service on the allegedly abusing person. Except
98 as otherwise provided in § 16.1-253.2, a violation of the order shall constitute contempt of court.

99 D. At a full hearing on the petition, the court may issue a protective order pursuant to § 16.1-279.1 if
100 the court finds that the petitioner has proven the allegation of family abuse by a preponderance of the
101 evidence.

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

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

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

109 **§ 16.1-279.1. Protective order in cases of family abuse.**

110 A. In cases of family abuse, including any case involving an incarcerated or recently incarcerated
111 respondent against whom a preliminary protective order has been issued pursuant to § 16.1-253.1, the
112 court may issue a protective order to protect the health and safety of the petitioner and family or
113 household members of the petitioner. A protective order issued under this section may include any one
114 or more of the following conditions to be imposed on the respondent:

- 115 1. Prohibiting acts of family abuse or criminal offenses that result in injury to person or property;
- 116 2. Prohibiting such contacts by the respondent with the petitioner or family or household members of
117 the petitioner as the court deems necessary for the health or safety of such persons;
- 118 3. Granting the petitioner possession of the residence occupied by the parties to the exclusion of the
119 respondent; however, no such grant of possession shall affect title to any real or personal property;
- 120 4. Enjoining the respondent from terminating any necessary utility service to the residence to which

121 the petitioner was granted possession pursuant to subdivision 3 or, where appropriate, ordering the
122 respondent to restore utility services to that residence;

123 5. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner
124 alone or jointly owned by the parties to the exclusion of the respondent and enjoining the respondent
125 from terminating any insurance, registration, or taxes on the motor vehicle and directing the respondent
126 to maintain the insurance, registration, and taxes, as appropriate; however, no such grant of possession
127 or use shall affect title to the vehicle;

128 6. Requiring that the respondent provide suitable alternative housing for the petitioner and, if
129 appropriate, any other family or household member and where appropriate, requiring the respondent to
130 pay deposits to connect or restore necessary utility services in the alternative housing provided;

131 7. Ordering the respondent to participate in treatment, counseling or other programs as the court
132 deems appropriate;

133 8. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such
134 petitioner meets the definition of owner in § 3.2-6500; ~~and~~

135 9. *Granting the petitioner and, where appropriate, any other family or household member exclusive*
136 *rights to and use of a cellular telephone number utilized by the parties to the exclusion of the*
137 *respondent;*

138 10. *Enjoining the respondent from terminating any cellular telephone service plan containing the*
139 *cellular telephone number to which the petitioner or any other family or household member was granted*
140 *exclusive rights to and use of pursuant to subdivision 9 or, where appropriate, ordering the respondent*
141 *to restore or reinstate such terminated service plan; and*

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

144 A1. If a protective order is issued pursuant to subsection A, the court may also issue a temporary
145 child support order for the support of any children of the petitioner whom the respondent has a legal
146 obligation to support. Such order shall terminate upon the determination of support pursuant to
147 § 20-108.1.

148 B. The protective order may be issued for a specified period of time up to a maximum of two years.
149 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
150 of the two-year period if no date is specified. Prior to the expiration of the protective order, a petitioner
151 may file a written motion requesting a hearing to extend the order. Proceedings to extend a protective
152 order shall be given precedence on the docket of the court. If the petitioner was a family or household
153 member of the respondent at the time the initial protective order was issued, the court may extend the
154 protective order for a period not longer than two years to protect the health and safety of the petitioner
155 or persons who are family or household members of the petitioner at the time the request for an
156 extension is made. The extension of the protective order shall expire at 11:59 p.m. on the last day
157 specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Nothing herein
158 shall limit the number of extensions that may be requested or issued.

159 C. A copy of the protective order shall be served on the respondent and provided to the petitioner as
160 soon as possible. The court, including a circuit court if the circuit court issued the order, shall forthwith,
161 but in all cases no later than the end of the business day on which the order was issued, enter and
162 transfer electronically to the Virginia Criminal Information Network the respondent's identifying
163 information and the name, date of birth, sex, and race of each protected person provided to the court
164 and shall forthwith forward the attested copy of the protective order containing any such identifying
165 information to the primary law-enforcement agency responsible for service and entry of protective
166 orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith
167 verify and enter any modification as necessary to the identifying information and other appropriate
168 information required by the Department of State Police into the Virginia Criminal Information Network
169 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and
170 the order shall be served forthwith upon the respondent and due return made to the court. Upon service,
171 the agency making service shall enter the date and time of service and other appropriate information
172 required by the Department of State Police into the Virginia Criminal Information Network and make
173 due return to the court. If the order is later dissolved or modified, a copy of the dissolution or
174 modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency
175 responsible for service and entry of protective orders, and upon receipt of the order by the primary
176 law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the
177 identifying information and other appropriate information required by the Department of State Police
178 into the Virginia Criminal Information Network as described above and the order shall be served
179 forthwith and due return made to the court.

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

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

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

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

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

208 H. As used in this section:

209 "Copy" includes a facsimile copy; and

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

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

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