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## HOUSE BILL NO. 262

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on January 29, 2018)

(Patron Prior to Substitute—Delegate Miyares)

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 number or other electronic device.

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 and, where appropriate, any other family or household member of the petitioner, exclusive use and possession of a cellular telephone number or electronic device. The court may enjoin the respondent from terminating a cellular telephone number or electronic device before the expiration of the contract term with a third-party provider. The court may enjoin the respondent from using a cellular telephone or other electronic device to locate the petitioner.

6. 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.

7. 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.

8. 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.

9. 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 provided to the court. A copy of a preliminary protective order 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

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

83 Upon receipt of the return of service or other proof of service pursuant to subsection C of  
84 § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to the  
85 primary law-enforcement agency, and the agency shall forthwith verify and enter any modification as  
86 necessary into the Virginia Criminal Information Network as described above. If the order is later  
87 dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded  
88 forthwith to the primary law-enforcement agency responsible for service and entry of protective orders,  
89 and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify  
90 and enter any modification as necessary to the identifying information and other appropriate information  
91 required by the Department of State Police into the Virginia Criminal Information Network as described  
92 above and the order shall be served forthwith and due return made to the court.

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

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

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

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

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

105 **§ 16.1-279.1. Protective order in cases of family abuse.**

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

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

119 5. *Granting the petitioner and, where appropriate, any other family or household member of the*  
120 *petitioner, exclusive use and possession of a cellular telephone number or electronic device. The court*  
121 *may enjoin the respondent from terminating a cellular telephone number or electronic device before the*

122 *expiration of the contract term with a third-party provider. The court may enjoin the respondent from*  
123 *using a cellular telephone or other electronic device to locate the petitioner;*

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

129 6. 7. Requiring that the respondent provide suitable alternative housing for the petitioner and, if  
130 appropriate, any other family or household member and where appropriate, requiring the respondent to  
131 pay deposits to connect or restore necessary utility services in the alternative housing provided;

132 7. 8. Ordering the respondent to participate in treatment, counseling or other programs as the court  
133 deems appropriate;

134 8. 9. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such  
135 petitioner meets the definition of owner in § 3.2-6500; and

136 9. 10. Any other relief necessary for the protection of the petitioner and family or household  
137 members of the petitioner, including a provision for temporary custody or visitation of a minor child.

138 A1. If a protective order is issued pursuant to subsection A, the court may also issue a temporary  
139 child support order for the support of any children of the petitioner whom the respondent has a legal  
140 obligation to support. Such order shall terminate upon the determination of support pursuant to  
141 § 20-108.1.

142 B. The protective order may be issued for a specified period of time up to a maximum of two years.  
143 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  
144 of the two-year period if no date is specified. Prior to the expiration of the protective order, a petitioner  
145 may file a written motion requesting a hearing to extend the order. Proceedings to extend a protective  
146 order shall be given precedence on the docket of the court. If the petitioner was a family or household  
147 member of the respondent at the time the initial protective order was issued, the court may extend the  
148 protective order for a period not longer than two years to protect the health and safety of the petitioner  
149 or persons who are family or household members of the petitioner at the time the request for an  
150 extension is made. The extension of the protective order shall expire at 11:59 p.m. on the last day  
151 specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Nothing herein  
152 shall limit the number of extensions that may be requested or issued.

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

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

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

178 F. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate  
179 jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths,  
180 the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing  
181 violent or threatening acts or harassment against or contact or communication with or physical proximity  
182 to another person, including any of the conditions specified in subsection A, shall be accorded full faith

183 and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided  
184 reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person  
185 against whom the order is sought to be enforced sufficient to protect such person's due process rights  
186 and consistent with federal law. A person entitled to protection under such a foreign order may file the  
187 order in any juvenile and domestic relations district court by filing with the court an attested or  
188 exemplified copy of the order. Upon such a filing, the clerk shall forthwith forward an attested copy of  
189 the order to the primary law-enforcement agency responsible for service and entry of protective orders  
190 which shall, upon receipt, enter the name of the person subject to the order and other appropriate  
191 information required by the Department of State Police into the Virginia Criminal Information Network  
192 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where  
193 practical, the court may transfer information electronically to the Virginia Criminal Information Network.  
194 Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy  
195 available of any foreign order filed with that court. A law-enforcement officer may, in the performance  
196 of his duties, rely upon a copy of a foreign protective order or other suitable evidence which has been  
197 provided to him by any source and may also rely upon the statement of any person protected by the  
198 order that the order remains in effect.

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

202 H. As used in this section:

203 "Copy" includes a facsimile copy; and

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

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

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