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HOUSE BILL NO. 2417

Offered January 9, 2019

Prefiled January 8, 2019

A *BILL to amend and reenact §§ 16.1-253.4 and 19.2-152.8 of the Code of Virginia, relating to emergency protective order; required conditions; petition to dissolve or modify.*

Patrons—Herring and Hurst

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.4 and 19.2-152.8 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.~~ As conditions of such emergency protective order, the judge or magistrate shall prohibit (a) acts of family abuse or criminal offenses by the respondent that result in injury to person or property;

~~2. Prohibiting and~~ (b) such contacts by the respondent with the allegedly abused person or family or household members of the allegedly abused person, including prohibiting the respondent from being in the physical presence of 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;

~~3. Granting.~~ The judge or magistrate, as additional conditions of such emergency protective order, may grant (1) 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; and

~~4. Granting~~ (2) 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.

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 *or petitioner* may at any time file a motion with the court requesting a hearing to dissolve or modify the order issued hereunder, *including removal or modification of the conditions imposed pursuant to subsection B.* 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

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59 additional period of time not to exceed three days after expiration of the original order. The request for
60 an emergency protective order or extension of an order may be made orally, in person or by electronic
61 means, and the judge of a circuit court, general district court, or juvenile and domestic relations district
62 court or a magistrate may issue an oral emergency protective order. An oral emergency protective order
63 issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the
64 order or the magistrate on a preprinted form approved and provided by the Supreme Court of Virginia.
65 The completed form shall include a statement of the grounds for the order asserted by the officer or the
66 allegedly abused person.

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

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

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

105 H. As used in this section, "law-enforcement officer" means (i) any full-time or part-time employee
106 of a police department or sheriff's office which is part of or administered by the Commonwealth or any
107 political subdivision thereof and who is responsible for the prevention and detection of crime and the
108 enforcement of the penal, traffic, or highway laws of the Commonwealth; (ii) any member of an
109 auxiliary police force established pursuant to § 15.2-1731; and (iii) any special conservator of the peace
110 who meets the certification requirements for a law-enforcement officer as set forth in § 15.2-1706.
111 Part-time employees are compensated officers who are not full-time employees as defined by the
112 employing police department or sheriff's office.

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

118 J. As used in this section:

119 "Copy" includes a facsimile copy.

120 "Physical presence" includes (i) intentionally maintaining direct visual contact with the petitioner or

(ii) unreasonably being within 100 feet from the petitioner's residence or place of employment.

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

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

M. Upon issuance of an emergency protective order, the clerk of court shall make available to the petitioner information that is published by the Department of Criminal Justice Services for victims of domestic violence or for petitioners in protective order cases.

§ 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.~~ *As conditions of such emergency protective order, the judge or magistrate shall prohibit (a) acts of violence, force, or threat or criminal offenses by the respondent resulting in injury to person or property;*

2. ~~Prohibiting and~~ *(b) such contacts by the respondent with the alleged victim or the alleged victim's family or household members, including prohibiting the respondent from being in the physical presence of the alleged victim or the alleged victim's family or household members, as the judge or magistrate deems necessary to protect the safety of such persons;*

3. ~~Such.~~ *The judge or magistrate may impose such other conditions as the judge or magistrate deems necessary to prevent (i) acts of violence, force, or threat, (ii) (2) criminal offenses resulting in injury to person or property, or (iii) (3) communication or other contact of any kind by the respondent; and*

4. ~~Granting~~ *may grant 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.*

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 *or petitioner* may at any time file a motion with the court requesting a hearing to dissolve or modify the order, *including removal or modification of any of the conditions imposed pursuant to subsection B.* 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 by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each

182 protected person provided to the court to the primary law-enforcement agency providing service and
183 entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter
184 the name of the person subject to the order and other appropriate information required by the
185 Department of State Police into the Virginia Criminal Information Network established and maintained
186 by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served
187 forthwith upon the respondent. Upon service, the agency making service shall enter the date and time of
188 service and other appropriate information required into the Virginia Criminal Information Network and
189 make due return to the court. One copy of the order shall be given to the alleged victim of such crime.
190 The judge or magistrate who issues an oral order pursuant to an electronic request by a law-enforcement
191 officer shall verify the written order to determine whether the officer who reduced it to writing
192 accurately transcribed the contents of the oral order. The original copy shall be filed with the clerk of
193 the appropriate district court within five business days of the issuance of the order. If the order is later
194 dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded
195 forthwith to the primary law-enforcement agency responsible for service and entry of protective orders,
196 and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify
197 and enter any modification as necessary to the identifying information and other appropriate information
198 required by the Department of State Police into the Virginia Criminal Information Network as described
199 above and the order shall be served forthwith and due return made to the court. Upon request, the clerk
200 shall provide the alleged victim of such crime with information regarding the date and time of service.

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

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

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

215 I. As used in this section:

216 "Copy" includes a facsimile copy.

217 "Physical presence" includes (i) intentionally maintaining direct visual contact with the petitioner or
218 (ii) unreasonably being within 100 feet from the petitioner's residence or place of employment.

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

220 K. No emergency protective order shall be issued pursuant to this section against a law-enforcement
221 officer for any action arising out of the lawful performance of his duties.

222 L. Upon issuance of an emergency protective order, the clerk of the court shall make available to the
223 petitioner information that is published by the Department of Criminal Justice Services for victims of
224 domestic violence or for petitioners in protective order cases.