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SENATE BILL NO. 1540

Offered January 9, 2019

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A *BILL to amend and reenact §§ 16.1-112, 16.1-253.1, 16.1-296, and 19.2-152.9 of the Code of Virginia, relating to protective orders; contents of preliminary protective orders; docketing of an appeal.*

Patron—Surovell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-112, 16.1-253.1, 16.1-296, and 19.2-152.9 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-112. All papers transmitted to appellate court; further proceedings.

The judge or clerk of any court from which an appeal is taken under this article shall promptly transmit to the clerk of the appellate court the case papers, which shall include the original warrant or warrants or other notices or pleadings with the judgment endorsed thereon, together with all pleadings, exhibits, and other papers filed in the trial of the case. The required bond, and, if applicable, the money deposited to secure such bond and the writ tax and costs paid pursuant to § 16.1-107 shall also be submitted, along with the fees for service of process of the notice of appeal in the circuit court. Upon receipt of the foregoing by the clerk of the appellate court, the case shall then be docketed, *except that an appeal from an order of protection issued pursuant to § 19.2-152.10 shall be docketed within 48 hours upon receipt of such appeal.*

When such case has been docketed, the clerk of such appellate court shall by writing to be served, as provided in §§ 8.01-288, 8.01-293, 8.01-296, and 8.01-325, or by certified mail, with certified delivery receipt requested, notify the appellee, or by regular mail to his attorney, that such an appeal has been docketed in his office, provided that upon affidavit by the appellant or his agent in conformity with § 8.01-316 being filed with the clerk, the clerk shall post such notice at the front door of his courtroom and shall mail a copy thereof to the appellee at his last known address or place of abode or to his attorney, and he shall file a certificate of such posting and mailing with the papers in the case. No such appeal shall be heard unless it appears that the appellee or his attorney has had such notice, or that such certificate has been filed, 10 days before the date fixed for trial, or has in person or by attorney waived such notice.

§ 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. *If an ex parte order is issued without an affidavit or a completed form as prescribed by subsection D of § 16.1-253.4 being presented, the court, in its order, shall state the basis upon which the order was entered, including a summary of the allegations made and the court's findings.* 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

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59 property.

60 4. Enjoining the respondent from terminating any necessary utility service to a premises that the
61 petitioner has been granted possession of pursuant to subdivision 3 or, where appropriate, ordering the
62 respondent to restore utility services to such premises.

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

68 6. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner
69 alone or jointly owned by the parties to the exclusion of the allegedly abusing person; however, no such
70 grant of possession or use shall affect title to the vehicle.

71 7. Requiring that the allegedly abusing person provide suitable alternative housing for the petitioner
72 and any other family or household member and, where appropriate, requiring the respondent to pay
73 deposits to connect or restore necessary utility services in the alternative housing provided.

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

76 9. Any other relief necessary for the protection of the petitioner and family or household members of
77 the petitioner.

78 B. The court shall forthwith, but in all cases no later than the end of the business day on which the
79 order was issued, enter and transfer electronically to the Virginia Criminal Information Network the
80 respondent's identifying information and the name, date of birth, sex, and race of each protected person
81 provided to the court. A copy of a preliminary protective order containing any such identifying
82 information shall be forwarded forthwith to the primary law-enforcement agency responsible for service
83 and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the
84 agency shall forthwith verify and enter any modification as necessary to the identifying information and
85 other appropriate information required by the Department of State Police into the Virginia Criminal
86 Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et
87 seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as
88 provided in § 16.1-264 and due return made to the court. However, if the order is issued by the circuit
89 court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the
90 respondent's identifying information and the name, date of birth, sex, and race of each protected person
91 provided to the court to the primary law-enforcement agency providing service and entry of protective
92 orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the
93 person subject to the order and other appropriate information required by the Department of State Police
94 into the Virginia Criminal Information Network established and maintained by the Department pursuant
95 to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly
96 abusing person in person as provided in § 16.1-264. Upon service, the agency making service shall enter
97 the date and time of service and other appropriate information required by the Department of State
98 Police into the Virginia Criminal Information Network and make due return to the court. The
99 preliminary order shall specify a date for the full hearing. The hearing shall be held within 15 days of
100 the issuance of the preliminary order. If the respondent fails to appear at this hearing because the
101 respondent was not personally served, or if personally served was incarcerated and not transported to the
102 hearing, the court may extend the protective order for a period not to exceed six months. The extended
103 protective order shall be served forthwith on the respondent. However, upon motion of the respondent
104 and for good cause shown, the court may continue the hearing. The preliminary order shall remain in
105 effect until the hearing. Upon request after the order is issued, the clerk shall provide the petitioner with
106 a copy of the order and information regarding the date and time of service. The order shall further
107 specify that either party may at any time file a motion with the court requesting a hearing to dissolve or
108 modify the order. The hearing on the motion shall be given precedence on the docket of the court.

109 Upon receipt of the return of service or other proof of service pursuant to subsection C of
110 § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to the
111 primary law-enforcement agency, and the agency shall forthwith verify and enter any modification as
112 necessary into the Virginia Criminal Information Network as described above. If the order is later
113 dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded
114 forthwith to the primary law-enforcement agency responsible for service and entry of protective orders,
115 and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify
116 and enter any modification as necessary to the identifying information and other appropriate information
117 required by the Department of State Police into the Virginia Criminal Information Network as described
118 above and the order shall be served forthwith and due return made to the court.

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

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

E. 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.

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

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

H. Upon issuance of a preliminary protective order, the clerk of the 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.

I. Any affidavit submitted by a non-English-speaking person in support of a petition filed pursuant to this section shall be translated by a qualified translator no later than the close of business on the next business day following the submission of the affidavit. A qualified translator may be appointed by the court or chosen by such non-English-speaking person who submitted the affidavit in the same manner as provided by § 8.01-384.1:1 to appoint qualified interpreters.

§ 16.1-296. Jurisdiction of appeals; procedure.

A. From any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be taken to the circuit court within 10 days from the entry of a final judgment, order or conviction and shall be heard de novo. However, in a case arising under the Uniform Interstate Family Support Act (§ 20-88.32 et seq.), a party may take an appeal pursuant to this section within 30 days from entry of a final order or judgment. Protective orders issued pursuant to § 16.1-279.1 in cases of family abuse and orders entered pursuant to § 16.1-278.2 are final orders from which an appeal may be taken.

B. Upon receipt of notice of such appeal the juvenile court shall forthwith transmit to the attorney for the Commonwealth a report incorporating the results of any investigation conducted pursuant to § 16.1-273, which shall be confidential in nature and made available only to the court and the attorney for the defendant (i) after the guilt or innocence of the accused has been determined or (ii) after the court has made its findings on the issues subject to appeal. After final determination of the case, the report and all copies thereof shall be forthwith returned to such juvenile court.

C. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall be entitled to a jury of 12 persons. In all other cases, the jury shall consist of seven persons. If the jury in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of § 16.1-278.8 after taking into consideration the report of any investigation made pursuant to § 16.1-237 or 16.1-273.

C1. In any hearing held upon an appeal taken by a child on a finding that he is delinquent and on a disposition pursuant to § 16.1-278.8, the provisions of § 16.1-302 shall apply mutatis mutandis, except in the case of trial by jury which shall be open. If proceedings in the circuit court are closed pursuant to this subsection, any records or portions thereof relating to such closed proceedings shall remain confidential.

C2. Where an appeal is taken by a juvenile on a finding that he is delinquent and on a disposition pursuant to § 16.1-278.8 and the juvenile is in a secure facility pending the appeal, the circuit court, when practicable, shall hold a hearing on the merits of the case within 45 days of the filing of the appeal. Upon receipt of the notice of appeal from the juvenile court, the circuit court shall provide a copy of the order and a copy of the notice of appeal to the attorney for the Commonwealth within seven days after receipt of notice of an appeal. The time limitations shall be tolled during any period in which the juvenile has escaped from custody. A juvenile held continuously in secure detention shall be released from confinement if there is no hearing on the merits of his case within 45 days of the filing of the appeal. The circuit court may extend the time limitations for a reasonable period of time based upon good cause shown, provided the basis for such extension is recorded in writing and filed among the papers of the proceedings.

D. When an appeal is taken in a case involving termination of parental rights brought under § 16.1-283, the circuit court shall hold a hearing on the merits of the case within 90 days of the perfecting of the appeal. An appeal of the case to the Court of Appeals shall take precedence on the docket of the Court.

E. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction

182 of the juvenile and domestic relations district court, the appeal shall be dealt with in all respects as is an
183 appeal from a general district court pursuant to §§ 16.1-132 through 16.1-137; however, where an appeal
184 is taken by any person on a charge of nonsupport, the procedure shall be as is provided for appeals in
185 prosecutions under Chapter 5 (§ 20-61 et seq.) of Title 20.

186 F. In all other cases on appeal, proceedings in the circuit court shall be heard without a jury;
187 however, hearing of an issue by an advisory jury may be allowed, in the discretion of the judge, upon
188 the motion of any party. An appeal from an order of protection issued pursuant to § 16.1-279.1 shall be
189 given precedence on the docket of the court over other civil appeals taken to the circuit court from the
190 district courts, ~~but and shall otherwise be docketed and processed as other civil cases within 48 hours of~~
191 ~~receipt of such appeal.~~

192 G. Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee
193 could have been assessed in the juvenile and domestic relations court and shall be collected in the
194 circuit court, except that the appeal to circuit court of any case in which a fee either was or could have
195 been assessed pursuant to § 16.1-69.48:5 shall also be in accordance with § 16.1-296.2.

196 H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic
197 relations district court except for that portion of any order or judgment establishing a support arrearage
198 or suspending payment of support during pendency of an appeal. In cases involving support, no appeal
199 shall be allowed until the party applying for the same or someone for him gives bond, in an amount and
200 with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment
201 as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment
202 of the court in which it was rendered. Upon appeal from a conviction for failure to support or from a
203 finding of civil or criminal contempt involving a failure to support, the juvenile and domestic relations
204 district court may require the party applying for the appeal or someone for him to give bond, with or
205 without surety, to insure his appearance and may also require bond in an amount and with sufficient
206 surety to secure the payment of prospective support accruing during the pendency of the appeal. An
207 appeal will not be perfected unless such appeal bond as may be required is filed within 30 days from
208 the entry of the final judgment or order. However, no appeal bond shall be required of the
209 Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict or
210 an insane person, or the interest of a county, city or town.

211 If bond is furnished by or on behalf of any party against whom judgment has been rendered for
212 money, the bond shall be conditioned for the performance and satisfaction of such judgment or order as
213 may be entered against the party on appeal, and for the payment of all damages which may be awarded
214 against him in the appellate court. If the appeal is by a party against whom there is no recovery, the
215 bond shall be conditioned for the payment of any damages as may be awarded against him on the
216 appeal. The provisions of § 16.1-109 shall apply to bonds required pursuant to this subsection.

217 This subsection shall not apply to release on bail pursuant to other subsections of this section or
218 § 16.1-298.

219 I. In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers
220 and authority granted by the chapter to the juvenile and domestic relations district court. Unless
221 otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint
222 counsel for the parties and compensate such counsel in accordance with the provisions of Article 6
223 (§ 16.1-266 et seq.) of this chapter.

224 J. In any case which has been referred or transferred from a circuit court to a juvenile court and an
225 appeal is taken from an order or judgment of the juvenile court, the appeal shall be taken to the circuit
226 court in the same locality as the juvenile court to which the case had been referred or transferred.

227 **§ 19.2-152.9. Preliminary protective orders.**

228 A. Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable
229 period of time, subjected to an act of violence, force, or threat, or (ii) a petition or warrant has been
230 issued for the arrest of the alleged perpetrator for any criminal offense resulting from the commission of
231 an act of violence, force, or threat, the court may issue a preliminary protective order against the alleged
232 perpetrator in order to protect the health and safety of the petitioner or any family or household member
233 of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the
234 petition is supported by an affidavit or sworn testimony before the judge or intake officer. *If an ex parte*
235 *order is issued without an affidavit or a completed form as prescribed by subsection D of § 19.2-152.8*
236 *being presented, the court, in its order, shall state the basis upon which the order was entered,*
237 *including a summary of the allegations made and the court's findings.* Immediate and present danger of
238 any act of violence, force, or threat or evidence sufficient to establish probable cause that an act of
239 violence, force, or threat has recently occurred shall constitute good cause.

240 A preliminary protective order may include any one or more of the following conditions to be
241 imposed on the respondent:

242 1. Prohibiting acts of violence, force, or threat or criminal offenses that may result in injury to
243 person or property;

2. Prohibiting such other contacts by the respondent with the petitioner or the petitioner's family or household members as the court deems necessary for the health and safety of such persons;

3. Such other conditions as the court deems 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 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 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 on the alleged perpetrator in person as provided in § 16.1-264, 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 protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the person subject to the order 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 on the alleged perpetrator in person as provided in § 16.1-264. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. The preliminary order shall specify a date for the full hearing. The hearing shall be held within 15 days of the issuance of the preliminary order. If the respondent fails to appear at this hearing because the respondent was not personally served, the court may extend the protective order for a period not to exceed six months. The extended protective order shall be served as soon as possible on the respondent. However, upon motion of the respondent and for good cause shown, the court may continue the hearing. The preliminary order shall remain in effect until the hearing. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of the order and information regarding the date and time of service. The order shall further specify that either party may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.

Upon receipt of the return of service or other proof of service pursuant to subsection C of § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to primary law-enforcement agency and the agency shall forthwith verify and enter any modification as necessary into the Virginia Criminal Information Network as described above. 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 appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court.

C. The preliminary order is effective upon personal service on the alleged perpetrator. Except as otherwise provided, a violation of the order shall constitute contempt of court.

D. At a full hearing on the petition, the court may issue a protective order pursuant to § 19.2-152.10 if the court finds that the petitioner has proven the allegation that the petitioner is or has been, within a reasonable period of time, subjected to an act of violence, force, or threat by a preponderance of the evidence.

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

F. 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.

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

305 H. Upon issuance of a preliminary protective order, the clerk of the court shall make available to the
306 petitioner information that is published by the Department of Criminal Justice Services for victims of
307 domestic violence or for petitioners in protective order cases.

308 *I. Any affidavit submitted by a non-English-speaking person in support of a petition filed pursuant to*
309 *this section shall be translated by a qualified translator no later than the close of business on the next*
310 *business day following the submission of the affidavit. A qualified translator may be appointed by the*
311 *court or chosen by such non-English-speaking person who submitted the affidavit in the same manner as*
312 *provided by § 8.01-384.1:1 to appoint qualified interpreters.*