20102688D

HOUSE BILL NO. 1111

Offered January 8, 2020
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A BILL to amend and reenact §§ 16.1-253.2, 17.1-513, 18.2-60.4, 18.2-60.5, 18.2-119, and 18.2-308.1:4 of the Code of Virginia and to amend the Code of Virginia by adding in Article 6 of Chapter 4 of Title 18.2 a section numbered 18.2-60.6, relating to protective orders; issuance upon convictions for certain felonies; penalty.

Patrons—Hudson and Bourne

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.2, 17.1-513, 18.2-60.4, 18.2-60.5, 18.2-119, and 18.2-308.1:4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 6 of Chapter 4 of Title 18.2 a section numbered 18.2-60.6 as follows:

§ 16.1-253.2. Violation of provisions of protective orders; penalty.

A. In addition to any other penalty provided by law, any person who violates any provision of a protective order issued pursuant to § 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.14, or 16.1-279.1 or subsection B of § 20-103, when such violation involves a provision of the protective order that prohibits such person from (i) going or remaining upon land, buildings, or premises; (ii) further acts of family abuse; or (iii) committing a criminal offense, or which prohibits contacts by the respondent with the allegedly abused person or family or household members of the allegedly abused person as the court deems appropriate, is guilty of a Class 1 misdemeanor. The punishment for any person convicted of a second offense of violating a protective order, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, shall include a mandatory minimum term of confinement of 60 days. Any person convicted of a third or subsequent offense of violating a protective order, when the offense is committed within 20 years of the first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence is guilty of a Class 6 felony and the punishment shall include a mandatory minimum term of confinement of six months. The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence.

B. In addition to any other penalty provided by law, any person who, while knowingly armed with a firearm or other deadly weapon, violates any provision of a protective order with which he has been served issued pursuant to § 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.14, or 16.1-279.1 or subsection B of § 20-103 is guilty of a Class 6 felony.

C. If the respondent commits an assault and battery upon any party protected by the protective order resulting in bodily injury to the party or stalks any party protected by the protective order in violation of § 18.2-60.3, he is guilty of a Class 6 felony. Any person who violates such a protective order by furtively entering the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty provided by law.

D. Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § 16.1-279.1 for a specified period not exceeding two years from the date of conviction*; however, if the person is convicted under this section for an offense punishable as a felony, the court may enter a protective order pursuant to § 18.2-60.6.*

§ 17.1-513. Jurisdiction of circuit courts.

The circuit courts shall have jurisdiction of proceedings by quo warranto or information in the nature of quo warranto and to issue writs of mandamus, prohibition and certiorari to all inferior tribunals created or existing under the laws of the Commonwealth, and to issue writs of mandamus in all matters of proceedings arising from or pertaining to the action of the boards of supervisors or other governing bodies of the several counties for which such courts are respectively held or in other cases in which it may be necessary to prevent the failure of justice and in which mandamus may issue according to the principles of common law. They shall have appellate jurisdiction in all cases, civil and criminal, in which an appeal may, as provided by law, be taken from the judgment or proceedings of any inferior tribunal.

They shall have original and general jurisdiction of all civil cases, except cases upon claims to

recover personal property or money not of greater value than $100, exclusive of interest, and except such cases as are assigned to some other tribunal; also in all cases for the recovery of fees in excess of $100; penalties or cases involving the right to levy and collect toll or taxes or the validity of an ordinance or bylaw of any corporation; and also, of all cases, civil or criminal, in which an appeal may be had to the Supreme Court.

They shall have jurisdiction to hear motions filed for the purpose of modifying, dissolving, or extending a protective order pursuant to § 16.1-279.1, *18.2-60.6,* or 19.2-152.10 if the circuit court issued such order, unless the circuit court remanded the matter to the jurisdiction of the juvenile and domestic relations district court in accordance with § 16.1-297. They shall also have original jurisdiction of all indictments for felonies and of presentments, informations, and indictments for misdemeanors. They shall also have jurisdiction for bail hearings pursuant to §§ 19.2-327.2:1 and 19.2-327.10:1.

They shall have appellate jurisdiction of all cases, civil and criminal, in which an appeal, writ of error or supersedeas may, as provided by law, be taken to or allowed by such courts, or the judges thereof, from or to the judgment or proceedings of any inferior tribunal. They shall also have jurisdiction of all other matters, civil and criminal, made cognizable therein by law and when a motion to recover money is allowed in such tribunals, they may hear and determine the same, although it is to recover less than $100.

§ 18.2-60.4. Violation of protective orders; penalty.

A. Any person who violates any provision of a protective order issued pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 is guilty of a Class 1 misdemeanor. Conviction hereunder shall bar a finding of contempt for the same act. The punishment for any person convicted of a second offense of violating a protective order, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, shall include a mandatory minimum term of confinement of 60 days. Any person convicted of a third or subsequent offense of violating a protective order, when the offense is committed within 20 years of the first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence, is guilty of a Class 6 felony and the punishment shall include a mandatory minimum term of confinement of six months. The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence.

B. In addition to any other penalty provided by law, any person who, while knowingly armed with a firearm or other deadly weapon, violates any provision of a protective order with which he has been served issued pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 is guilty of a Class 6 felony.

C. If the respondent commits an assault and battery upon any party protected by the protective order resulting in bodily injury to the party or stalks any party protected by the protective order in violation of § 18.2-60.3, he is guilty of a Class 6 felony. Any person who violates such a protective order by furtively entering the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty provided by law.

D. Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended.

E. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § 19.2-152.10 for a specified period not exceeding two years from the date of conviction*; however, if the person is convicted under this section for an offense punishable as a felony, the court may enter a protective order pursuant to § 18.2-60.6.*

§ 18.2-60.5. Unauthorized use of electronic tracking device; penalty.

A. Any person who installs or places an electronic tracking device through intentionally deceptive means and without consent, or causes an electronic tracking device to be installed or placed through intentionally deceptive means and without consent, and uses such device to track the location of any person is guilty of a Class 3 misdemeanor.

B. The provisions of this section shall not apply to the installation, placement, or use of an electronic tracking device by:

1. A law-enforcement officer, judicial officer, probation or parole officer, or employee of the Department of Corrections when any such person is engaged in the lawful performance of official duties and in accordance with other state or federal law;

2. The parent or legal guardian of a minor when tracking (i) the minor or (ii) any person authorized by the parent or legal guardian as a caretaker of the minor at any time when the minor is under the person's sole care;

3. A legally authorized representative of an incapacitated adult, as defined in § 18.2-369;

4. The owner of fleet vehicles, when tracking such vehicles;

5. An electronic communications provider to the extent that such installation, placement, or use is disclosed in the provider's terms of use, privacy policy, or similar document made available to the

customer; or

6. A registered private investigator, as defined in § 9.1-138, who is regulated in accordance with § 9.1-139 and is acting in the normal course of his business and with the consent of the owner of the property upon which the electronic tracking device is installed and placed. However, such exception shall not apply if the private investigator is working on behalf of a client who is subject to a protective order under § 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, *18.2-60.6,* 19.2-152.8, 19.2-152.9, *or* 19.2-152.10~~,~~ or subsection B of § 20-103, or if the private investigator knows or should reasonably know that the client seeks the private investigator's services to aid in the commission of a crime.

C. For the purposes of this section:

"Electronic tracking device" means an electronic or mechanical device that permits a person to remotely determine or track the position and movement of another person.

"Fleet vehicle" means (i) one or more motor vehicles owned by a single entity and operated by employees or agents of the entity for business or government purposes, (ii) motor vehicles held for lease or rental to the general public, or (iii) motor vehicles held for sale by motor vehicle dealers.

§ 18.2-60.6. Protective orders authorized upon conviction of certain felonies.

A. For purposes of this section, "offense authorizing the issuance of a protective order" means any felony violation of this article or § 16.1-253.2, Article 1 (§ 18.2-30 et seq.), Article 3 (§ 18.2-47 et seq.), Article 4 (§ 18.2-51 et seq.), or Article 7 (§ 18.2-61 et seq.).

B. Upon request of the victim or the request of the attorney for the Commonwealth made on behalf of the victim, the court may enter a protective order upon finding a person guilty of an offense authorizing the issuance of a protective order for any period of time, including up to the lifetime of the defendant, that the court deems necessary to protect the health and safety of the victim. A protective order issued under this section may impose only the following conditions:

1. Prohibiting acts of family abuse or of violence, force, or threat against the victim or criminal offenses that may result in injury to the person or property of the victim; and

2. Prohibiting such contacts by the defendant with the victim as the court deems necessary for the health and safety of the victim.

C. The protective order shall expire at 11:59 p.m. on the last day specified in the protective order. Prior to the expiration of the protective order, a victim 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 the court deems necessary to protect the health and safety of the victim. The extension of the protective order shall expire at 11:59 p.m. on the last day specified. Nothing herein shall limit the number of extensions that may be requested or issued.

D. A copy of the protective order shall be served on the defendant and provided to the victim as soon as possible. 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 defendant's identifying information and the name, date of birth, sex, and race of the victim provided to the court and shall forthwith forward the attested copy of the protective order 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 defendant 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 appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described in this subsection and the order shall be served forthwith and due return made to the court.

E. In addition to any other penalty provided by law, any person who violates a protective order issued pursuant to this section is guilty of a Class 1 misdemeanor. Upon a conviction for violating a protective order issued pursuant to this section, the court that issued the original protective order may modify the protective order or extend the protective order as the court deems necessary to protect the health and safety of the victim.

F. The victim may at any time file a written motion with the court requesting a hearing to dissolve or modify the order. The defendant may file a written motion with the court requesting a hearing to

dissolve or modify the order upon completion of all terms of sentencing and probation imposed upon conviction for the offense authorizing the issuance of a protective order. The party filing the motion to dissolve or modify an order shall provide notice of the motion to the other party and the court shall conduct a hearing on any motion filed. No fees shall be charged for filing or serving a petition or motion pursuant to this section.

G. 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 victim protected by the order or that of the family of such victim, except to the extent that disclosure is (i) required by law or the Rules of Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

H. Notwithstanding the provisions of § 19.2-244, a prosecution for a violation of a protective order issued pursuant to this section may be had in (i) any county or city in which any act in violation of the protective order occurred or was committed or (ii) the county or city in which the court that issued the protective order is located.

§ 18.2-119. Trespass after having been forbidden to do so; penalties.

If any person without authority of law goes upon or remains upon the lands, buildings, or premises of another, or any portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, *or* custodian, or the agent of any such person, or other person lawfully in charge thereof, or after having been forbidden to do so by a sign or signs posted by or at the direction of such persons or the agent of any such person or by the holder of any easement or other right-of-way authorized by the instrument creating such interest to post such signs on such lands, structures, premises, or portion or area thereof at a place or places where it or they may be reasonably seen, or if any person, whether he is the owner~~,~~ *or* tenant or otherwise entitled to the use of such land, building, or premises, goes upon, or remains upon such land, building, or premises after having been prohibited from doing so by a court of competent jurisdiction by an order issued pursuant to ~~§§~~ *§* 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.2 through 16.1-278.6, 16.1-278.8, 16.1-278.14, 16.1-278.15, 16.1-279.1, *18.2-60.6,* 19.2-152.8, 19.2-152.9, or ~~§~~ 19.2-152.10 or an ex parte order issued pursuant to § 20-103, and after having been served with such order, he ~~shall be~~ *is* guilty of a Class 1 misdemeanor. This section shall not be construed to affect in any way the provisions of §§ 18.2-132 through 18.2-136.

§ 18.2-308.1:4. Purchase or transportation of firearm by persons subject to protective orders; penalties.

A. It is unlawful for any person who is subject to (i) a protective order entered pursuant to § 16.1-253.1, 16.1-253.4, 16.1-278.2, 16.1-279.1, *18.2-60.6,* 19.2-152.8, 19.2-152.9, or 19.2-152.10; (ii) an order issued pursuant to subsection B of § 20-103; (iii) an order entered pursuant to subsection D of § 18.2-60.3; (iv) a preliminary protective order entered pursuant to subsection F of § 16.1-253 where a petition alleging abuse or neglect has been filed; or (v) an order issued by a tribunal of another state, the United States or any of its territories, possessions, or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to those cited in clauses (i), (ii), (iii), or (iv) to purchase or transport any firearm while the order is in effect. Any person with a concealed handgun permit shall be prohibited from carrying any concealed firearm, and shall surrender his permit to the court entering the order, for the duration of any protective order referred to herein. A violation of this subsection is a Class 1 misdemeanor.

B. In addition to the prohibition set forth in subsection A, it is unlawful for any person who is subject to a protective order entered pursuant to § 16.1-279.1 or an order issued by a tribunal of another state, the United States or any of its territories, possessions, or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to § 16.1-279.1 to knowingly possess any firearm while the order is in effect, provided that for a period of 24 hours after being served with a protective order in accordance with subsection C of § 16.1-279.1 such person may continue to possess and, notwithstanding the provisions of subsection A, transport any firearm possessed by such person at the time of service for the purposes of selling or transferring any such firearm to any person who is not otherwise prohibited by law from possessing such firearm. A violation of this subsection is a Class 6 felony.