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HOUSE BILL NO. 919

Offered January 8, 2020

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A BILL to amend and reenact §§ 16.1-253.1 and 19.2-152.9 of the Code of Virginia, relating to preliminary protective orders; hearing date.

Patrons—Levine and Samirah

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.1 and 19.2-152.9 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. 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 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

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59 respondent's identifying information and the name, date of birth, sex, and race of each protected person
60 provided to the court. A copy of a preliminary protective order containing any such identifying
61 information shall be forwarded forthwith to the primary law-enforcement agency responsible for service
62 and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the
63 agency shall forthwith verify and enter any modification as necessary to the identifying information and
64 other appropriate information required by the Department of State Police into the Virginia Criminal
65 Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et
66 seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as
67 provided in § 16.1-264 and due return made to the court. However, if the order is issued by the circuit
68 court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the
69 respondent's identifying information and the name, date of birth, sex, and race of each protected person
70 provided to the court to the primary law-enforcement agency providing service and entry of protective
71 orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the
72 person subject to the order and other appropriate information required by the Department of State Police
73 into the Virginia Criminal Information Network established and maintained by the Department pursuant
74 to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly
75 abusing person in person as provided in § 16.1-264. Upon service, the agency making service shall enter
76 the date and time of service and other appropriate information required by the Department of State
77 Police into the Virginia Criminal Information Network and make due return to the court. *Upon request*
78 *after the order is issued, the clerk shall provide the petitioner with a copy of the order and information*
79 *regarding the date and time of service.*

80 The preliminary order shall specify a date for the full hearing. The hearing shall be held within 15
81 days of the issuance of the preliminary order, unless (i) the court is closed pursuant to § 16.1-69.35 or
82 17.1-207 and such closure prevents the hearing from being held within such time period, in which case
83 the hearing shall be held on the next day not a Saturday, Sunday, legal holiday, or day on which the
84 court is lawfully closed, or (ii) *a hearing or trial date for a related criminal offense has been set and is*
85 *later than 15 days after such issuance, in which case the court may set a hearing for the protective*
86 *order to be held on the same hearing or trial date as the related criminal offense.* If such court is
87 closed pursuant to § 16.1-69.35 or 17.1-207, or if the court sets a hearing for the protective order on
88 the same hearing or trial date as a related criminal offense, the preliminary protective order shall
89 remain in full force and effect until it is dissolved by such court, until another preliminary protective
90 order is entered, or until a protective order is entered. If the respondent fails to appear at this hearing
91 because the respondent was not personally served, or if personally served was incarcerated and not
92 transported to the hearing, the court may extend the protective order for a period not to exceed six
93 months. The extended protective order shall be served forthwith on the respondent. ~~However, upon~~
94 ~~motion of the respondent and for good cause shown, the court may continue the hearing.~~

95 The preliminary order shall remain in effect until the hearing. ~~Upon request after the order is issued,~~
96 ~~the clerk shall provide the petitioner with a copy of the order and information regarding the date and~~
97 ~~time of service.~~ The order shall further specify that (a) either party may at any time file a motion with
98 the court requesting a hearing to dissolve or modify the order, (b) *the respondent may at any time file a*
99 *motion requesting an earlier or later hearing date, and (c) the preliminary order shall remain in effect*
100 *until the hearing. A copy of any motion filed pursuant to clause (a) or (b) shall be served by personal*
101 *service by the primary law-enforcement agency responsible for service and entry of protective orders.*
102 The hearing on the motion shall be given precedence on the docket of the court.

103 Upon receipt of the return of service or other proof of service pursuant to subsection C of
104 § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to the
105 primary law-enforcement agency, and the agency shall forthwith verify and enter any modification as
106 necessary into the Virginia Criminal Information Network as described above. If the order is later
107 dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded
108 forthwith to the primary law-enforcement agency responsible for service and entry of protective orders,
109 and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify
110 and enter any modification as necessary to the identifying information and other appropriate information
111 required by the Department of State Police into the Virginia Criminal Information Network as described
112 above and the order shall be served forthwith and due return made to the court.

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

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

118 E. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's
119 office, nor any employee of them, may disclose, except among themselves, the residential address,
120 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, *motion*, 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.

§ 19.2-152.9. Preliminary protective orders.

A. Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable period of time, subjected to an act of violence, force, or threat, or (ii) a petition or warrant has been issued for the arrest of the alleged perpetrator for any criminal offense resulting from the commission of an act of violence, force, or threat, the court may issue a preliminary protective order against the alleged perpetrator 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 § 19.2-152.8 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 any act of violence, force, or threat or evidence sufficient to establish probable cause that an act of violence, force, or threat has recently occurred shall constitute good cause.

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

1. Prohibiting acts of violence, force, or threat or criminal offenses that may result in injury to 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. *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 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, unless (i) the court is closed pursuant to § 16.1-69.35 or 17.1-207 and such closure prevents the hearing from being held within such time period, in which case the hearing shall be held on the next day not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, or (ii) a hearing or trial date for a related criminal offense has been set and is later than 15 days after such issuance, in which case the court may set a hearing for the protective

182 *order to be held on the same hearing or trial date as the related criminal offense.* If such court is
183 closed pursuant to § 16.1-69.35 or 17.1-207, *or if the court sets a hearing for the protective order on*
184 *the same hearing or trial date as a related criminal offense,* the preliminary protective order shall
185 remain in full force and effect until it is dissolved by such court, until another preliminary protective
186 order is entered, or until a protective order is entered. If the respondent fails to appear at this hearing
187 because the respondent was not personally served, the court may extend the protective order for a period
188 not to exceed six months. The extended protective order shall be served as soon as possible on the
189 respondent. ~~However, upon motion of the respondent and for good cause shown, the court may continue~~
190 ~~the hearing.~~

191 The preliminary order shall remain in effect until the hearing. ~~Upon request after the order is issued,~~
192 ~~the clerk shall provide the petitioner with a copy of the order and information regarding the date and~~
193 ~~time of service.~~ The order shall further specify that (a) either party may at any time file a motion with
194 the court requesting a hearing to dissolve or modify the order, (b) *the respondent at any time may file a*
195 *motion requesting an earlier or later hearing date, and (c) the preliminary order shall remain in effect*
196 *until the hearing. A copy of any motion filed pursuant to clause (a) or (b) shall be served by personal*
197 *service by the primary law-enforcement agency responsible for service and entry of protective orders.*
198 The hearing on the motion shall be given precedence on the docket of the court.

199 Upon receipt of the return of service or other proof of service pursuant to subsection C of
200 § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to
201 primary law-enforcement agency and the agency shall forthwith verify and enter any modification as
202 necessary into the Virginia Criminal Information Network as described above. If the order is later
203 dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded
204 forthwith to the primary law-enforcement agency responsible for service and entry of protective orders,
205 and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify
206 and enter any modification as necessary to the identifying information and other appropriate information
207 required by the Department of State Police into the Virginia Criminal Information Network as described
208 above and the order shall be served forthwith and due return made to the court.

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

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

215 E. No fees shall be charged for filing or serving petitions, *motions, or orders* pursuant to this section.

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

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

222 H. Upon issuance of a preliminary 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.