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SENATE BILL NO. 144

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 28, 2020)

(Patron Prior to Substitute—Senator Stuart)

A *BILL to amend and reenact §§ 18.2-60.4 and 19.2-152.10 of the Code of Virginia, relating to protective orders; issuance upon convictions for certain felonies; penalty.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-60.4 and 19.2-152.10 of the Code of Virginia are amended and reenacted as follows:

§ 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, *other than a protective order issued pursuant to subsection C of § 19.2-152.10*, 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, *other than a protective order issued pursuant to subsection C of § 19.2-152.10*, 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, *other than a protective order issued pursuant to subsection C of § 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, *other than a protective order issued pursuant to subsection C of § 19.2-152.10*, 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, *other than a protective order issued pursuant to subsection C of § 19.2-152.10*, 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.

§ 19.2-152.10. Protective order.

A. The court may issue a protective order pursuant to this chapter to protect the health and safety of the petitioner and family or household members of a petitioner upon (i) the issuance of a petition or warrant for, or a conviction of, any criminal offense resulting from the commission of an act of violence, force, or threat or (ii) a hearing held pursuant to subsection D of § 19.2-152.9. A protective order issued under this section 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 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. Any other relief 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~~ *Except as provided in subsection C*, the protective order may be issued for a specified period of time up to a maximum of two years. The protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Prior to the

60 expiration of the protective order, a petitioner may file a written motion requesting a hearing to extend
61 the order. Proceedings to extend a protective order shall be given precedence on the docket of the court.
62 The court may extend the protective order for a period not longer than two years to protect the health
63 and safety of the petitioner or persons who are family or household members of the petitioner at the
64 time the request for an extension is made. The extension of the protective order shall expire at 11:59
65 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is
66 specified. Nothing herein shall limit the number of extensions that may be requested or issued.

67 *C. Upon conviction for an act of violence as defined in § 19.2-297.1 and upon the request of the*
68 *victim or of the attorney for the Commonwealth on behalf of the victim, the court may issue a protective*
69 *order to the victim pursuant to this chapter to protect the health and safety of the victim. The protective*
70 *order may be issued for any reasonable period of time, including up to the lifetime of the defendant,*
71 *that the court deems necessary to protect the health and safety of the victim. The protective order shall*
72 *expire at 11:59 p.m. on the last day specified in the protective order, if any. Upon a conviction for*
73 *violation of a protective order issued pursuant to this subsection, the court that issued the original*
74 *protective order may extend the protective order as the court deems necessary to protect the health and*
75 *safety of the victim. The extension of the protective order shall expire at 11:59 p.m. on the last day*
76 *specified, if any. Nothing herein shall limit the number of extensions that may be issued.*

77 *D.* A copy of the protective order shall be served on the respondent and provided to the petitioner as
78 soon as possible. The court, including a circuit court if the circuit court issued the order, shall forthwith,
79 but in all cases no later than the end of the business day on which the order was issued, enter and
80 transfer electronically to the Virginia Criminal Information Network the respondent's identifying
81 information and the name, date of birth, sex, and race of each protected person provided to the court
82 and shall forthwith forward the attested copy of the protective order and containing any such identifying
83 information to the primary law-enforcement agency responsible for service and entry of protective
84 orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith
85 verify and enter any modification as necessary to the identifying information and other appropriate
86 information required by the Department of State Police into the Virginia Criminal Information Network
87 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and
88 the order shall be served forthwith upon the respondent and due return made to the court. Upon service,
89 the agency making service shall enter the date and time of service and other appropriate information
90 required into the Virginia Criminal Information Network and make due return to the court. If the order
91 is later dissolved or modified, a copy of the dissolution or modification order shall also be attested,
92 forwarded forthwith to the primary law-enforcement agency responsible for service and entry of
93 protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall
94 forthwith verify and enter any modification as necessary to the identifying information and other
95 appropriate information required by the Department of State Police into the Virginia Criminal
96 Information Network as described above and the order shall be served forthwith and due return made to
97 the court.

98 *D. E.* Except as otherwise provided, a violation of a protective order issued under this section shall
99 constitute contempt of court.

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

102 *F. G.* Any judgment, order or decree, whether permanent or temporary, issued by a court of
103 appropriate jurisdiction in another state, the United States or any of its territories, possessions or
104 Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the
105 purpose of preventing violent or threatening acts or harassment against or contact or communication
106 with or physical proximity to another person, including any of the conditions specified in subsection A,
107 shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the
108 Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing
109 jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such
110 person's due process rights and consistent with federal law. A person entitled to protection under such a
111 foreign order may file the order in any appropriate district court by filing with the court, an attested or
112 exemplified copy of the order. Upon such a filing, the clerk shall forthwith forward an attested copy of
113 the order to the primary law-enforcement agency responsible for service and entry of protective orders
114 which shall, upon receipt, enter the name of the person subject to the order and other appropriate
115 information required by the Department of State Police into the Virginia Criminal Information Network
116 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where
117 practical, the court may transfer information electronically to the Virginia Criminal Information Network.

118 Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy
119 available of any foreign order filed with that court. A law-enforcement officer may, in the performance
120 of his duties, rely upon a copy of a foreign protective order or other suitable evidence which has been
121 provided to him by any source and may also rely upon the statement of any person protected by the

order that the order remains in effect.

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

~~H.~~ *I.* 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.

~~I.~~ *J.* No fees shall be charged for filing or serving petitions pursuant to this section.

~~J.~~ *K.* As used in this section:

"Copy" includes a facsimile copy; and

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

~~K.~~ *L.* Upon issuance of a 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.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.