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SENATE BILL NO. 873

Offered January 11, 2023

Prefiled January 3, 2023

A BILL to amend and reenact § 16.1-253.1 of the Code of Virginia, relating to family abuse protective orders filed on behalf of minors.

Patron—McDougle

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:**1. That § 16.1-253.1 of the Code of Virginia is 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 respondent's identifying information and the name, date of birth, sex, and race of each protected person

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59 provided to the court. A copy of a preliminary protective order containing any such identifying
60 information shall be forwarded forthwith to the primary law-enforcement agency responsible for service
61 and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the
62 agency shall forthwith verify and enter any modification as necessary to the identifying information and
63 other appropriate information required by the Department of State Police into the Virginia Criminal
64 Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et
65 seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as
66 provided in § 16.1-264 and due return made to the court. However, if the order is issued by the circuit
67 court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the
68 respondent's identifying information and the name, date of birth, sex, and race of each protected person
69 provided to the court to the primary law-enforcement agency providing service and entry of protective
70 orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the
71 person subject to the order and other appropriate information required by the Department of State Police
72 into the Virginia Criminal Information Network established and maintained by the Department pursuant
73 to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly
74 abusing person in person as provided in § 16.1-264. Upon service, the agency making service shall enter
75 the date and time of service and other appropriate information required by the Department of State
76 Police into the Virginia Criminal Information Network and make due return to the court. The
77 preliminary order shall specify a date for the full hearing. The hearing shall be held within 15 days of
78 the issuance of the preliminary order, unless the court is closed pursuant to § 16.1-69.35 or 17.1-207 and
79 such closure prevents the hearing from being held within such time period, in which case the hearing
80 shall be held on the next day not a Saturday, Sunday, legal holiday, or day on which the court is
81 lawfully closed. If such court is closed pursuant to § 16.1-69.35 or 17.1-207, the preliminary protective
82 order shall remain in full force and effect until it is dissolved by such court, until another preliminary
83 protective order is entered, or until a protective order is entered. If the respondent fails to appear at this
84 hearing because the respondent was not personally served, or if personally served was incarcerated and
85 not transported to the hearing, the court may extend the protective order for a period not to exceed six
86 months. The extended protective order shall be served forthwith on the respondent. However, upon
87 motion of the respondent and for good cause shown, the court may continue the hearing. The
88 preliminary order shall remain in effect until the hearing. Upon request after the order is issued, the
89 clerk shall provide the petitioner with a copy of the order and information regarding the date and time
90 of service. The order shall further specify that either party may at any time file a motion with the court
91 requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given
92 precedence on the docket of the court. Upon petitioner's motion to dissolve the preliminary protective
93 order, a dissolution order may be issued ex parte by the court with or without a hearing. If an ex parte
94 hearing is held, it shall be heard by the court as soon as practicable. If a dissolution order is issued ex
95 parte, the court shall serve a copy of such dissolution order on respondent in conformity with
96 §§ 8.01-286.1 and 8.01-296.

97 Upon receipt of the return of service or other proof of service pursuant to subsection C of
98 § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to the
99 primary law-enforcement agency, and the agency shall forthwith verify and enter any modification as
100 necessary into the Virginia Criminal Information Network as described above. If the order is later
101 dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded
102 forthwith to the primary law-enforcement agency responsible for service and entry of protective orders,
103 and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify
104 and enter any modification as necessary to the identifying information and other appropriate information
105 required by the Department of State Police into the Virginia Criminal Information Network as described
106 above and the order shall be served forthwith and due return made to the court.

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

109 D. *In the event that the allegedly abused person is a minor, the attorney for the Commonwealth or a*
110 *law-enforcement officer may file a petition on behalf of such minor as his next friend.*

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

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

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

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

121 ~~H.~~ *I.* Upon issuance of a preliminary protective order, the clerk of the court shall make available to
122 the petitioner information that is published by the Department of Criminal Justice Services for victims of
123 domestic violence or for petitioners in protective order cases.

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