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HOUSE BILL NO. 470

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Surovell
on February 21, 2024)

(Patron Prior to Substitute—Delegate Martinez)

A BILL to amend and reenact §§ 16.1-253.1, 16.1-253.4, 16.1-260, and 16.1-279.1 of the Code of Virginia, relating to petitions in juvenile and domestic relations district court; parents; minors.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.1, 16.1-253.4, 16.1-260, and 16.1-279.1 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, or the filing of a written motion requesting a hearing to extend a protective order pursuant to § 16.1-279.1 without alleging that the petitioner is or has been, within a reasonable period of time, subject 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 or upon the filing of a written motion requesting a hearing to extend a protective order pursuant to § 16.1-279.1 without alleging that the petitioner is or has been, within a reasonable period of time, subject to family abuse. 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. *Nothing in this section shall authorize a parent to file such preliminary protective order against his minor child if such parent and such child reside in the same home unless such minor child has been emancipated in accordance with the provisions of Article 15 (§ 16.1-331 et seq.).*

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 and the password to such 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 or surveille 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

60 petitioner meets the definition of owner in § 3.2-6500.

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

63 B. The court shall forthwith, but in all cases no later than the end of the business day on which the
64 order was issued, enter and transfer electronically to the Virginia Criminal Information Network the
65 respondent's identifying information and the name, date of birth, sex, and race of each protected person
66 provided to the court. A copy of a preliminary protective order containing any such identifying
67 information shall be forwarded forthwith to the primary law-enforcement agency responsible for service
68 and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the
69 agency shall forthwith verify and enter any modification as necessary to the identifying information and
70 other appropriate information required by the Department of State Police into the Virginia Criminal
71 Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et
72 seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as
73 provided in § 16.1-264 and due return made to the court. However, if the order is issued by the circuit
74 court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the
75 respondent's identifying information and the name, date of birth, sex, and race of each protected person
76 provided to the court to the primary law-enforcement agency providing service and entry of protective
77 orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the
78 person subject to the order and other appropriate information required by the Department of State Police
79 into the Virginia Criminal Information Network established and maintained by the Department pursuant
80 to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly
81 abusing person in person as provided in § 16.1-264. Upon service, the agency making service shall enter
82 the date and time of service and other appropriate information required by the Department of State
83 Police into the Virginia Criminal Information Network and make due return to the court. The
84 preliminary order shall specify a date for the full hearing. The hearing shall be held within 15 days of
85 the issuance of the preliminary order, unless the hearing has been continued pursuant to this subsection
86 or court is closed pursuant to § 16.1-69.35 or 17.1-207 and such closure prevents the hearing from being
87 held within such time period, in which case the hearing shall be held on the next day not a Saturday,
88 Sunday, legal holiday, or day on which the court is lawfully closed. If such court is closed pursuant to
89 § 16.1-69.35 or 17.1-207, the preliminary protective order shall remain in full force and effect until it is
90 dissolved by such court, until another preliminary protective order is entered, or until a protective order
91 is entered. If the respondent fails to appear at this hearing because the respondent was not personally
92 served, or if personally served was incarcerated and not transported to the hearing, the court may extend
93 the protective order for a period not to exceed six months. The extended protective order shall be served
94 forthwith on the respondent. However, where the respondent shows good cause, the court may continue
95 the hearing. The preliminary order shall remain in effect until the hearing. Upon request after the order
96 is issued, the clerk shall provide the petitioner with a copy of the order and information regarding the
97 date and time of service. The order shall further specify that either party may at any time file a motion
98 with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be
99 given precedence on the docket of the court. Upon petitioner's motion to dissolve the preliminary
100 protective order, a dissolution order may be issued ex parte by the court with or without a hearing. If an
101 ex parte hearing is held, it shall be heard by the court as soon as practicable. If a dissolution order is
102 issued ex parte, the court shall serve a copy of such dissolution order on respondent in conformity with
103 §§ 8.01-286.1 and 8.01-296.

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

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

116 D. In the event that the allegedly abused person is a minor and an emergency protective order was
117 issued pursuant to § 16.1-253.4 for the protection of such minor and the respondent is a parent,
118 guardian, or person standing in loco parentis, the attorney for the Commonwealth or a law-enforcement
119 officer may file a petition on behalf of such minor as his next friend before such emergency protective
120 order expires or within 24 hours of the expiration of such emergency protective order.

121 E. 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.

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.

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

I. 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.

§ 16.1-253.4. Emergency protective orders authorized in certain cases; penalty.

A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person; *however, such judge or magistrate shall not issue an ex parte emergency protective order to a petitioner against such petitioner's minor child if such parent and such child reside in the same home unless such minor child has been emancipated in accordance with the provisions of Article 15 (§ 16.1-331 et seq.).*

B. When a law-enforcement officer or an allegedly abused person asserts under oath to a judge or magistrate, and on that assertion or other evidence the judge or magistrate (i) finds that a warrant for a violation of § 18.2-57.2 has been issued or issues a warrant for violation of § 18.2-57.2 and finds that there is probable danger of further acts of family abuse against a family or household member by the respondent or (ii) finds that reasonable grounds exist to believe that the respondent has committed family abuse and there is probable danger of a further such offense against a family or household member by the respondent, the judge or magistrate shall issue an ex parte emergency protective order, except if the respondent is a minor, an emergency protective order shall not be required, imposing one or more of the following conditions on the respondent:

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 allegedly abused person or family or household members of the allegedly abused person, including prohibiting the respondent from being in the physical presence of the allegedly abused person or family or household members of the allegedly abused person, as the judge or magistrate deems necessary to protect the safety of such persons;
3. Granting the family or household member possession of the premises occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property; 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.

When the judge or magistrate considers the issuance of an emergency protective order pursuant to clause (i), he shall presume that there is probable danger of further acts of family abuse against a family or household member by the respondent unless the presumption is rebutted by the allegedly abused person.

C. An emergency protective order issued pursuant to this section shall expire at 11:59 p.m. on the third day following issuance. If the expiration occurs on a day that the court is not in session, the emergency protective order shall be extended until 11:59 p.m. on the next day that the juvenile and domestic relations district court is in session. When issuing an emergency protective order under this section, the judge or magistrate shall provide the protected person or the law-enforcement officer seeking the emergency protective order with the form for use in filing petitions pursuant to § 16.1-253.1 and written information regarding protective orders that shall include the telephone numbers of domestic violence agencies and legal referral sources on a form prepared by the Supreme Court. If these forms are provided to a law-enforcement officer, the officer may provide these forms to the protected person when giving the emergency protective order to the protected person. The respondent may at any time file a motion with the court requesting a hearing to dissolve or modify the order issued hereunder. The hearing on the motion shall be given precedence on the docket of the court.

D. A law-enforcement officer may request an emergency protective order pursuant to this section and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant to § 16.1-253.1 or 16.1-279.1, may request the extension of an emergency protective order for an additional period of time not to exceed three days after expiration of the original order. The request for an emergency protective order or extension of an order may be made orally, in person or by electronic means, and the judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate may issue an oral emergency protective order. An oral emergency protective order

183 issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the
184 order or the magistrate on a preprinted form approved and provided by the Supreme Court of Virginia.
185 The completed form shall include a statement of the grounds for the order asserted by the officer or the
186 allegedly abused person.

187 E. The court or magistrate shall forthwith, but in all cases no later than the end of the business day
188 on which the order was issued, enter and transfer electronically to the Virginia Criminal Information
189 Network the respondent's identifying information and the name, date of birth, sex, and race of each
190 protected person provided to the court or magistrate. A copy of an emergency protective order issued
191 pursuant to this section containing any such identifying information shall be forwarded forthwith to the
192 primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of
193 the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any
194 modification as necessary to the identifying information and other appropriate information required by
195 the Department of State Police into the Virginia Criminal Information Network established and
196 maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be
197 served forthwith upon the respondent and due return made to the court. However, if the order is issued
198 by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order
199 containing the respondent's identifying information and the name, date of birth, sex, and race of each
200 protected person provided to the court to the primary law-enforcement agency providing service and
201 entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter
202 the name of the person subject to the order and other appropriate information required by the
203 Department of State Police into the Virginia Criminal Information Network established and maintained by the
204 Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith
205 on the respondent. Upon service, the agency making service shall enter the date and time of service and
206 other appropriate information required by the Department of State Police into the Virginia Criminal
207 Information Network and make due return to the court. One copy of the order shall be given to the
208 allegedly abused person when it is issued, and one copy shall be filed with the written report required
209 by subsection D of § 19.2-81.3. The judge or magistrate who issues an oral order pursuant to an
210 electronic request by a law-enforcement officer shall verify the written order to determine whether the
211 officer who reduced it to writing accurately transcribed the contents of the oral order. The original copy
212 shall be filed with the clerk of the juvenile and domestic relations district court within five business
213 days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or
214 modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency
215 responsible for service and entry of protective orders, and upon receipt of the order by the primary
216 law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the
217 identifying information and other appropriate information required by the Department of State Police
218 into the Virginia Criminal Information Network as described above and the order shall be served
219 forthwith and due return made to the court. Upon request, the clerk shall provide the allegedly abused
220 person with information regarding the date and time of service.

221 F. The availability of an emergency protective order shall not be affected by the fact that the family
222 or household member left the premises to avoid the danger of family abuse by the respondent.

223 G. The issuance of an emergency protective order shall not be considered evidence of any
224 wrongdoing by the respondent.

225 H. As used in this section, "law-enforcement officer" means (i) any full-time or part-time employee
226 of a police department or sheriff's office which is part of or administered by the Commonwealth or any
227 political subdivision thereof and who is responsible for the prevention and detection of crime and the
228 enforcement of the penal, traffic, or highway laws of the Commonwealth; (ii) any member of an
229 auxiliary police force established pursuant to § 15.2-1731; and (iii) any special conservator of the peace
230 who meets the certification requirements for a law-enforcement officer as set forth in § 15.2-1706.
231 Part-time employees are compensated officers who are not full-time employees as defined by the
232 employing police department or sheriff's office.

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

238 J. As used in this section:

239 "Copy" includes a facsimile copy.

240 "Physical presence" includes (i) intentionally maintaining direct visual contact with the petitioner or
241 (ii) unreasonably being within 100 feet from the petitioner's residence or place of employment.

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

243 L. Except as provided in § 16.1-253.2, a violation of a protective order issued under this section shall
244 constitute contempt of court.

M. Upon issuance of an emergency protective order, the clerk of 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.

§ 16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection H and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests, and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk; (ii) designated nonattorney employees of the Department of Social Services may complete, sign, and file petitions and motions relating to the establishment, modification, or enforcement of support on forms approved by the Supreme Court of Virginia with the clerk; (iii) designated nonattorney employees of a local department of social services may complete, sign, and file with the clerk, on forms approved by the Supreme Court of Virginia, petitions for foster care review, petitions for permanency planning hearings, petitions to establish paternity, motions to establish or modify support, motions to amend or review an order, and motions for a rule to show cause; and (iv) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services, in need of supervision, or delinquent. Complaints alleging abuse or neglect of a child shall be referred initially to the local department of social services in accordance with the provisions of Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is receiving child support services or public assistance. No individual who is receiving support services or public assistance shall be denied the right to file a petition or motion to establish, modify, or enforce an order for support of a child. If the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together with notice of the court date, to the Division of Child Support Enforcement. If a petitioner is seeking to establish child support, the intake officer shall provide the petitioner information on the possible availability of medical assistance through the Family Access to Medical Insurance Security (FAMIS) plan or other government-sponsored coverage through the Department of Medical Assistance Services.

B. The appearance of a child before an intake officer may be by (i) personal appearance before the intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, an intake officer may exercise all powers conferred by law. All communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

When the court service unit of any court receives a complaint alleging facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake officer, may proceed informally to make such adjustment as is practicable without the filing of a petition or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to establish probable cause for the issuance of the petition.

An intake officer may proceed informally on a complaint alleging a child is in need of services, in need of supervision, or delinquent only if the juvenile (a) is not alleged to have committed a violent juvenile felony or (b) has not previously been proceeded against informally or adjudicated delinquent for an offense that would be a felony if committed by an adult. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is delinquent for an offense that would be a felony if committed by an adult shall be filed with the court if the juvenile had previously been proceeded against informally by intake or had been adjudicated delinquent for an offense that would be a felony if committed by an adult.

If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and the attendance officer has provided documentation to the intake officer that the relevant school division has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the court. The intake officer may defer filing the petition and proceed informally by developing a truancy plan, provided that (1) the juvenile has not previously been proceeded against informally or adjudicated in need of supervision on more than two occasions for failure to comply with compulsory school attendance as provided in § 22.1-254 and (2) the immediately previous informal action or adjudication occurred at least three calendar years prior to the current complaint. The juvenile and his parent or

306 parents, guardian, or other person standing in loco parentis must agree, in writing, for the development
307 of a truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents,
308 guardian, or other person standing in loco parentis participate in such programs, cooperate in such
309 treatment, or be subject to such conditions and limitations as necessary to ensure the juvenile's
310 compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer
311 the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an
312 interagency interdisciplinary team approach. The team may include qualified personnel who are
313 reasonably available from the appropriate department of social services, community services board, local
314 school division, court service unit, and other appropriate and available public and private agencies and
315 may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the
316 deferral period the juvenile has not successfully completed the truancy plan or the truancy program, then
317 the intake officer shall file the petition.

318 Whenever informal action is taken as provided in this subsection on a complaint alleging that a child
319 is in need of services, in need of supervision, or delinquent, the intake officer shall (A) develop a plan
320 for the juvenile, which may include restitution, the performance of community service, or on a
321 complaint alleging that a child has committed a delinquent act other than an act that would be a felony
322 or a Class 1 misdemeanor if committed by an adult and with the consent of the juvenile's parent or legal
323 guardian, referral to a youth justice diversion program established pursuant to § 16.1-309.11, based upon
324 community resources and the circumstances which resulted in the complaint, (B) create an official record
325 of the action taken by the intake officer and file such record in the juvenile's case file, and (C) advise
326 the juvenile and the juvenile's parent, guardian, or other person standing in loco parentis and the
327 complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent
328 based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241,
329 or in the case of a referral to a youth justice diversion program established pursuant to § 16.1-309.11,
330 that any subsequent report from the youth justice diversion program alleging that the juvenile failed to
331 comply with the youth justice diversion program's sentence within 180 days of the sentencing date, may
332 result in the filing of a petition with the court.

333 C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody,
334 visitation, or support of a child is the subject of controversy or requires determination, (ii) a person has
335 deserted, abandoned, or failed to provide support for any person in violation of law, (iii) a child or such
336 child's parent, guardian, legal custodian, or other person standing in loco parentis is entitled to treatment,
337 rehabilitation, or other services which are required by law, (iv) family abuse has occurred and a
338 protective order is being sought pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1, or (v) an act of
339 violence, force, or threat has occurred, a protective order is being sought pursuant to § 19.2-152.8,
340 19.2-152.9, or 19.2-152.10, and either the alleged victim or the respondent is a juvenile. If any such
341 complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to
342 be abused, neglected, in need of services, in need of supervision, or delinquent, if the intake officer
343 believes that probable cause does not exist, or that the authorization of a petition will not be in the best
344 interest of the family or juvenile or that the matter may be effectively dealt with by some agency other
345 than the court, he may refuse to authorize the filing of a petition. *If the intake officer refuses to file a*
346 *petition that a child is in need of services or in need of supervision when such petition is sought by the*
347 *parent or legal guardian of such child, he shall provide a written explanation that details the reasons*
348 *for such refusal and shall provide information to such parent or legal guardian regarding any agency*
349 *other than the court that can provide services for such child.* The intake officer shall provide to a
350 person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written
351 explanation of the conditions, procedures and time limits applicable to the issuance of protective orders
352 pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If the person is seeking a protective order pursuant
353 to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer shall provide a written explanation of the
354 conditions, procedures, and time limits applicable to the issuance of protective orders pursuant to
355 § 19.2-152.8, 19.2-152.9, or 19.2-152.10.

356 D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall
357 be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be
358 in need of supervision have utilized or attempted to utilize treatment and services available in the
359 community and have exhausted all appropriate nonjudicial remedies which are available to them. When
360 the intake officer determines that the parties have not attempted to utilize available treatment or services
361 or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the
362 petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility,
363 or individual to receive treatment or services, and a petition shall not be filed. Only after the intake
364 officer determines that the parties have made a reasonable effort to utilize available community
365 treatment or services may he permit the petition to be filed.

366 E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an
367 adult would be punishable as a Class 1 misdemeanor or as a felony, when such refusal is based solely

upon a finding that no probable cause exists, the complainant shall be notified in writing at that time of the complainant's right to apply to a magistrate for a warrant. The application for a warrant to the magistrate shall be filed within 10 days of the issuance of the written notification. The written notification shall indicate that the intake officer made a finding that no probable cause exists and shall provide notice that the complainant has 10 days to apply for a warrant to the magistrate. The complainant shall provide the magistrate with a copy of the written notification upon application to the magistrate. If a magistrate determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer refuses to authorize a petition relating to a ~~child in need of services or in need of supervision~~, a status offense, or a misdemeanor other than Class 1, his decision is final. *If the intake officer refuses to authorize a petition relating to a child in need of services or in need of supervision, the child's parent, guardian, or other person standing in loco parentis may file such petition relating to a child in need of services or in need of supervision with the clerk of the juvenile and domestic relations district court.* If the intake officer refuses to authorize a petition relating to an offense that if committed by an adult would be punishable as a Class 1 misdemeanor or as a felony when such refusal is based upon a finding that (i) probable cause exists, but that (ii) the matter is appropriate for diversion, his decision is final and the complainant shall not have a right to apply to a magistrate for a warrant.

Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 2 of § 16.1-256, the intake officer shall accept and file a petition founded upon the warrant.

F. The intake officer shall notify the attorney for the Commonwealth of the filing of any petition which alleges facts of an offense which would be a felony if committed by an adult.

G. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.), the intake officer shall file a report with the division superintendent of the school division in which any student who is the subject of a petition alleging that such student who is a juvenile has committed an act, wherever committed, which would be a crime if committed by an adult, or that such student who is an adult has committed a crime and is alleged to be within the jurisdiction of the court. The report shall notify the division superintendent of the filing of the petition and the nature of the offense, if the violation involves:

1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 et seq.), 6.1 (§ 18.2-307.1 et seq.), or 7 (§ 18.2-308.1 et seq.) of Chapter 7 of Title 18.2;

2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;

4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

7. Arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;

8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93;

9. Robbery pursuant to § 18.2-58;

10. Prohibited criminal street gang activity pursuant to § 18.2-46.2;

11. Recruitment of other juveniles for a criminal street gang activity pursuant to § 18.2-46.3;

12. An act of violence by a mob pursuant to § 18.2-42.1;

13. Abduction of any person pursuant to § 18.2-47 or 18.2-48; or

14. A threat pursuant to § 18.2-60.

The failure to provide information regarding the school in which the student who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

The information provided to a division superintendent pursuant to this section may be disclosed only as provided in § 16.1-305.2.

H. The filing of a petition shall not be necessary:

1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and other pedestrian offenses, game and fish laws, or a violation of the ordinance of any city regulating surfing or any ordinance establishing curfew violations, animal control violations, or littering violations. In such cases the court may proceed on a summons issued by the officer investigating the violation in the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle accident may, at the scene of the accident or at any other location where a juvenile who is involved in such an accident may be located, proceed on a summons in lieu of filing a petition.

2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subsection H of § 16.1-241.

3. In the case of a misdemeanor violation of § 18.2-266, 18.2-266.1, or 29.1-738 or the commission of any other alcohol-related offense, provided that the juvenile is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the manner provided in § 16.1-278.8, 16.1-278.8:01, or 16.1-278.9. If the juvenile so charged with a violation of § 18.2-51.4, 18.2-266, 18.2-266.1, 18.2-272, or 29.1-738 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or 29.1-738.2, the provisions of these sections shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be served on a parent or legal guardian and the juvenile, and a copy of the summons shall be forwarded to the court in which the violation is to be tried. When a violation of § 4.1-305 is charged by summons, the juvenile shall be entitled to have the charge referred to intake for consideration of informal proceedings pursuant to subsection B, provided that such right is exercised by written notification to the clerk not later than 10 days prior to trial. At the time such summons alleging a violation of § 4.1-305 is served, the officer shall also serve upon the juvenile written notice of the right to have the charge referred to intake on a form approved by the Supreme Court and make return of such service to the court. If the officer fails to make such service or return, the court shall dismiss the summons without prejudice.

4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as provided by law for adults provided that notice of the summons to appear is mailed by the investigating officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

I. Failure to comply with the procedures set forth in this section shall not divest the juvenile court of the jurisdiction granted it in § 16.1-241.

§ 16.1-279.1. Protective order in cases of family abuse.

A. In cases of family abuse, including any case involving an incarcerated or recently incarcerated respondent against whom a preliminary protective order has been issued pursuant to § 16.1-253.1, the court may issue a protective order to protect the health and safety of the petitioner and family or household members of the petitioner; *however, the court shall not issue a protective order to a petitioner against such petitioner's minor child if such parent and such child reside in the same home unless such minor child has been emancipated in accordance with the provisions of Article 15 (§ 16.1-331 et seq.).* 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 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 residence occupied by the parties to the exclusion of the respondent; 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 the residence to which the petitioner was granted possession pursuant to subdivision 3 or, where appropriate, ordering the respondent to restore utility services to that residence;

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 and the password to such 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 or surveil 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 respondent and enjoining the respondent from terminating any insurance, registration, or taxes on the motor vehicle and directing the respondent to maintain the insurance, registration, and taxes, as appropriate; however, no such grant of possession or use shall affect title to the vehicle;

7. Requiring that the respondent provide suitable alternative housing for the petitioner and, if appropriate, 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. Ordering the respondent to participate in treatment, counseling or other programs as the court deems appropriate;

9. 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; and

10. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner, including a provision for temporary custody or visitation of a minor child.

A1. If a protective order is issued pursuant to subsection A, the court may also issue a temporary child support order for the support of any children of the petitioner whom the respondent has a legal obligation to support. Such order shall terminate upon the determination of support pursuant to § 20-108.1.

B. 1. 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 expiration of the protective order, a petitioner 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. A written motion requesting a hearing to extend the protective order shall be served as soon as possible on the respondent.

If the petitioner was a family or household member of the respondent at the time the initial protective order was issued, the court may extend the protective order for a period not longer than two years to protect the health and safety of the petitioner or persons who are family or household members of the petitioner at the time the request for an extension is made. The extension of 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. Nothing herein shall limit the number of extensions that may be requested or issued.

2. Upon the filing of a written motion requesting a hearing to extend the protective order, the court may issue an ex parte preliminary protective order pursuant to § 16.1-253.1 until the extension hearing. The ex parte preliminary protective order shall specify a date for the extension hearing, which shall be held within 15 days of the issuance of the ex parte preliminary protective order and may be held after the expiration of the protective order. If the respondent fails to appear at the extension hearing because the respondent was not personally served, the court shall schedule a new date for the extension hearing and may extend the ex parte preliminary protective order until such new date. The extended ex parte preliminary protective order shall be served as soon as possible on the respondent. If the respondent was personally served, where the petitioner shows by clear and convincing evidence that a continuance is necessary to meet the ends of justice or the respondent shows good cause, the court may continue the extension hearing and such ex parte preliminary protective order shall remain in effect until the extension hearing.

C. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. The court, including a circuit court if the circuit court issued the order, 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 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 respondent 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 by the Department of State Police 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 above and the order shall be served forthwith and due return made to the court.

D. Except as otherwise provided in § 16.1-253.2, a violation of a protective order issued under this section shall constitute contempt of court.

E. The court may assess costs and attorney fees against either party regardless of whether an order of protection has been issued as a result of a full hearing.

F. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, shall be accorded full faith

552 and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided
553 reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person
554 against whom the order is sought to be enforced sufficient to protect such person's due process rights
555 and consistent with federal law. A person entitled to protection under such a foreign order may file the
556 order in any juvenile and domestic relations district court by filing with the court an attested or
557 exemplified copy of the order. Upon such a filing, the clerk shall forthwith forward an attested copy of
558 the order to the primary law-enforcement agency responsible for service and entry of protective orders
559 which shall, upon receipt, enter the name of the person subject to the order and other appropriate
560 information required by the Department of State Police into the Virginia Criminal Information Network
561 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where
562 practical, the court may transfer information electronically to the Virginia Criminal Information Network.

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

568 G. Either party may at any time file a written motion with the court requesting a hearing to dissolve
569 or modify the order. Proceedings to dissolve or modify a protective order shall be given precedence on
570 the docket of the court. Upon petitioner's motion to dissolve the protective order, a dissolution order
571 may be issued ex parte by the court with or without a hearing. If an ex parte hearing is held, it shall be
572 heard by the court as soon as practicable. If a dissolution order is issued ex parte, the court shall serve a
573 copy of such dissolution order on respondent in conformity with §§ 8.01-286.1 and 8.01-296.

574 H. As used in this section:

575 "Copy" includes a facsimile copy.

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

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

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

583 K. Upon issuance of a protective order, the clerk of the court shall make available to the petitioner
584 information that is published by the Department of Criminal Justice Services for victims of domestic
585 violence or for petitioners in protective order cases.

586 L. An appeal of a final protective order issued by a circuit court pursuant to this section shall be
587 given expedited review by the Court of Appeals.