

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 907

An Act to amend and reenact §§ 16.1-253.1, 16.1-253.4 as it is currently effective and as it may become effective, §§ 16.1-279.1, 37.1-67.3 and 37.1-129 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 18.2-308.1:2, 18.2-308.1:3 and 18.2-308.1:4, relating to firearms; reporting of incompetence, and incapacity, and entry of protective orders; penalty.

[H 649]

Approved April 20, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.1, 16.1-253.4 as it is currently effective and as it may become effective, §§ 16.1-279.1, 37.1-67.3 and 37.1-129 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 18.2-308.1:2, 18.2-308.1:3 and 18.2-308.1:4 as follows:

§ 16.1-253.1. Preliminary protective orders in cases of family abuse.

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 order of protection against an allegedly abusing person in order to protect the health and safety of the petitioner. Such 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. Immediate and present danger of family abuse shall constitute good cause under this section. A preliminary order of protection may include any one or more of the following conditions to be imposed on the allegedly abusing person:

1. Prohibition of further acts of family abuse.
2. Prohibition of such other contacts between the parties as the court deems appropriate.
3. Prohibition of such other contacts with the allegedly abused family or household member as the court deems necessary to protect the safety of such persons.
4. Granting the petitioner possession of the residence 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.
5. Requiring that the allegedly abusing person provide suitable alternative housing for the petitioner and any other family or household member, where appropriate.

B. A copy of an ex parte preliminary order of protection shall be served as soon as possible on the allegedly abusing person in person as provided in § 16.1-264. The preliminary order shall specify a date for the full hearing, which shall be held within fifteen days of the issuance of the preliminary order. The order shall further specify that the person served may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court. *Upon receipt of service, the clerk shall certify and forward forthwith a copy of the order to the local police department or sheriff's office which shall, on the date of receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia crime information network system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be certified, forwarded and entered in the system as described above.*

C. The preliminary order is effective upon personal service on the allegedly abusing person. Any violation of the order shall constitute contempt of court.

D. At a full hearing on the petition, the court may issue an order of protection 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.

§ 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 verbal ex parte emergency protective order pursuant to this section.

B. When a law-enforcement officer asserts under oath to a judge or magistrate, and on that assertion or other evidence the judge or magistrate finds reasonable grounds to believe that (i) the respondent has committed assault and battery against a family or household member and (ii) there is probable danger of a further such offense against a family or household member by the respondent, the judge or magistrate may issue a written or verbal ex parte emergency protective order imposing one or more of the following conditions on the respondent:

1. Prohibition against further acts in violation of § 18.2-57.2;
2. Prohibition of such contacts between the parties as the judge deems appropriate; and
3. Granting the family or household member possession of the premises occupied by the parties to the exclusion of the respondent; provided, no such grant of possession shall affect title to any real or

personal property.

C. An emergency protective order issued pursuant to this section shall expire not later than 5 p.m. on the next business day.

D. A verbal emergency protective order issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the order, on a preprinted form approved and provided by the Supreme Court of Virginia. The completed form shall include a statement of the grounds for the order asserted by the officer.

E. A copy of an emergency protective order issued pursuant to this subsection shall be served upon the respondent as soon as possible. One copy of the order shall be given to the family or household member and one copy shall be filed with the written report required by § 19.2-81.3 C. The original copy shall be forwarded for verification to the judge or magistrate who issued the order and then filed with the clerk of the juvenile and domestic relations district court within five business days of the issuance of the order. *The clerk shall certify and forward forthwith a copy of the order to the local police department or sheriff's office which shall, on the date of receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia crime information network system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be certified, forwarded and entered in the system as described above.*

F. The availability of an emergency protective order shall not be affected by the fact that the family or household member left the premises to avoid the danger of a violation of § 18.2-57.2 by the respondent.

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

H. Any respondent upon whom an emergency protective order has been served and who violates that order shall be guilty of a Class 1 misdemeanor.

I. As used in this section, a "law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

§ 16.1-253.4. (Delayed effective date) Emergency protective orders authorized in certain cases; penalty.

A. Any judge of a circuit court, general district court, family court or magistrate may issue a written or verbal ex parte emergency protective order pursuant to this section.

B. When a law-enforcement officer asserts under oath to a judge or magistrate, and on that assertion or other evidence the judge or magistrate finds reasonable grounds to believe that (i) the respondent has committed assault and battery against a family or household member and (ii) there is probable danger of a further such offense against a family or household member by the respondent, the judge or magistrate may issue a written or verbal ex parte emergency protective order imposing one or more of the following conditions on the respondent:

1. Prohibition against further acts in violation of § 18.2-57.2;
2. Prohibition of such contacts between the parties as the judge deems appropriate; and
3. Granting the family or household member possession of the premises occupied by the parties to the exclusion of the respondent; provided, no such grant of possession shall affect title to any real or personal property.

C. An emergency protective order issued pursuant to this section shall expire not later than 5 p.m. on the next business day.

D. A verbal emergency protective order issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the order, on a preprinted form approved and provided by the Supreme Court of Virginia. The completed form shall include a statement of the grounds for the order asserted by the officer.

E. A copy of an emergency protective order issued pursuant to this subsection shall be served upon the respondent as soon as possible. One copy of the order shall be given to the family or household member and one copy shall be filed with the written report required by § 19.2-81.3 C. The original copy shall be forwarded for verification to the judge or magistrate who issued the order and then filed with the clerk of the family court within five business days of the issuance of the order. *The clerk shall certify and forward forthwith a copy of the order to the local police department or sheriff's office which shall, on the date of receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia crime information network system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be certified, forwarded and entered in the system as described above.*

F. The availability of an emergency protective order shall not be affected by the fact that the family or household member left the premises to avoid the danger of a violation of § 18.2-57.2 by the respondent.

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

H. Any respondent upon whom an emergency protective order has been served and who violates that order shall be guilty of a Class 1 misdemeanor.

I. As used in this section, a "law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

§ 16.1-279.1. Order of protection in cases of family abuse.

A. In cases of family abuse, the court may issue an order of protection to protect the health and safety of the petitioner and to effect the rehabilitation of the abusing person and reconciliation of the parties as the court deems appropriate. An order of protection issued under this section may include any one or more of the following conditions to be imposed on the abusing person:

1. Prohibition of further acts of family abuse;
2. Prohibition of such contacts between the parties as the court deems appropriate;
3. Granting the petitioner possession of the residence occupied by the parties to the exclusion of the abusing person; however, no such grant of possession shall affect title to any real or personal property;
4. Requiring that the abusing person provide suitable alternative housing for the petitioner, and, if appropriate, any other family or household member;
5. Ordering the petitioner, with his or her consent, or the abusing person to participate in treatment, counseling or other programs designed for the rehabilitation and reconciliation of the parties; and
6. Any other relief necessary for the protection of the petitioner and minor children.

B. The order of protection shall be issued for a specified period not to exceed one year. Either party may at any time file a written motion with the court requesting a hearing to dissolve or modify the order. *The clerk shall certify and forward forthwith a copy of the order to the local police department or sheriff's office which shall, on the date of receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia crime information network system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be certified, forwarded and entered in the system as described above.*

C. Any violation of an order of protection issued under this section shall constitute contempt of court.

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

§ 18.2-308.1:2. *Purchase, possession or transportation of firearm by persons adjudicated legally incompetent or mentally incapacitated; penalty.*

A. *It shall be unlawful for any person who has been adjudicated legally incompetent pursuant to § 37.1-128.02 or § 37.1-134 or mentally incapacitated pursuant to § 37.1-128.1 or § 37.1-132 and whose competency or capacity has not been restored pursuant to § 37.1-134.1, to purchase, possess, or transport any firearm. A violation of this subsection shall be punishable as a Class 1 misdemeanor.*

B. *Any firearm possessed or transported in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.*

§ 18.2-308.1:3. *Purchase, possession or transportation of firearm by persons involuntarily committed; penalty.*

A. *It shall be unlawful for any person involuntarily committed pursuant to § 37.1-67.3 to purchase, possess or transport a firearm during the period of such person's commitment. A violation of this subsection shall be punishable as a Class 1 misdemeanor.*

B. *Any firearm possessed or transported in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.*

C. *Any person prohibited from purchasing, possessing or transporting firearms under this subsection may, at any time following his release from commitment, petition the circuit court in the city or county in which he resides to restore his right to purchase, possess or transport a firearm. The court may, in its discretion and for good cause shown, grant the petition. The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order.*

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

A. *It shall be unlawful for any person who is subject to a protective order entered pursuant to §§ 16.1-253.1, 16.1-253.4, or § 16.1-279.1 or to an order entered pursuant to subsection E of*

§ 18.2-60.3 to purchase or transport any firearm while the order is in effect. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

B. Any firearm purchased or transported in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.

§ 37.1-67.3. Same; involuntary admission and treatment.

If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the judge shall inform such person of his right to a commitment hearing and right to counsel. The judge shall ascertain if a person whose admission is sought is represented by counsel, and if he is not represented by counsel, the judge shall appoint an attorney-at-law to represent him. However, if such person requests an opportunity to employ counsel, the court shall give him a reasonable opportunity to employ counsel at his own expense. The commitment hearing shall be held within forty-eight hours of the execution of the detention order as provided for in § 37.1-67.1; however, if the forty-eight-hour period herein specified terminates on a Saturday, Sunday or a legal holiday, such person may be detained, as herein provided, until the next day which is not a Saturday, Sunday or legal holiday, but in no event may he be detained for a period longer than seventy-two hours or ninety-six hours when such legal holiday occurs on a Monday or Friday. A Saturday, Sunday, or legal holiday shall be deemed to include the time period up to 8:00 a.m. of the next day which is not a Saturday, Sunday, or legal holiday. Prior to such hearing, the judge shall fully inform such person of the basis for his detention, the standard upon which he may be detained, the right of appeal from such hearing to the circuit court, the right to jury trial on appeal, and the place, date, and time of such hearing.

If such person is incapable of accepting or unwilling to accept voluntary admission and treatment as provided for in § 37.1-67.2, a commitment hearing shall be scheduled as soon as possible, allowing the person who is the subject of the hearing an opportunity to prepare any defenses which he may have, obtain independent evaluation and expert opinion at his own expense, and summons other witnesses.

To the extent possible, during the commitment hearing, the attorney for the person whose admission is sought shall interview his client, the petitioner, the examiner described below, and any other material witnesses. He shall also examine all relevant diagnostic and other reports, present evidence and witnesses, if any, on his client's behalf, and otherwise actively represent his client in the proceedings.

The petitioner shall be given adequate notice of the place, date, and time of the commitment hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the hearing, and to testify and present evidence.

Notwithstanding the above, the judge shall require an examination of such person by a psychiatrist who is licensed in Virginia or a clinical psychologist who is licensed in Virginia or, if such a psychiatrist or clinical psychologist is not available, a physician or psychologist who is licensed in Virginia and who is qualified in the diagnosis of mental illness. All such examinations shall be conducted in private. The judge shall summons the examiner who shall certify that he has personally examined the individual and has probable cause to believe that he is or is not mentally ill, that such person does or does not present an imminent danger to himself or others, and requires or does not require involuntary hospitalization. The judge, in his discretion, may accept written certification of the examiner's findings if the examination has been personally made within the preceding five days and if there is no objection to the acceptance of such written certification by the person or his attorney. The judge shall not render any decision on the petition until such examiner has presented his report either orally or in writing.

Except as otherwise provided in this section, prior to making any adjudication that such person is mentally ill and shall be confined to an institution pursuant to this section, the judge shall request from the community services board which serves the political subdivision where the person resides a prescreening report, and the board or clinic shall provide such a report within forty-eight hours or within seventy-two hours if the forty-eight-hour period terminates on a Saturday, Sunday or legal holiday. The report shall state whether the person is deemed to be mentally ill, an imminent danger to himself or others and in need of involuntary hospitalization, whether there is no less restrictive alternative to institutional confinement and what the recommendations are for that person's care and treatment. If the prescreening report is not received by the judge within the specified period, the judge shall proceed to dispose of the case without the board's or clinic's recommendation. In the case of a person sentenced and committed to the Department of Corrections and who has been examined by a psychiatrist or clinical psychologist, the judge may proceed to adjudicate whether the person is mentally ill and should be confined pursuant to this section without requesting a prescreening report from the community services board.

After observing the person and obtaining the necessary positive certification and other relevant evidence, if the judge finds specifically that the person (i) presents an imminent danger to himself or others as a result of mental illness, or (ii) has been proven to be so seriously mentally ill as to be substantially unable to care for himself, and (iii) that alternatives to involuntary confinement and treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to institutional confinement and treatment, the judge shall by written order and specific findings so certify and order that the person be placed in a hospital or other facility for a period of treatment not to exceed

180 days from the date of the court order. Such placement shall be in a hospital or other facility designated by the community services board which serves the political subdivision in which the person was examined as provided in this section. If the community services board does not provide a placement recommendation at the commitment hearing, the person shall be placed in a hospital or other facility designated by the Commissioner.

After observing the person and obtaining the necessary positive certification and other relevant evidence, if the judge finds specifically that the person (i) presents an imminent danger to himself or others as a result of mental illness, or (ii) has been proven to be so seriously mentally ill as to be substantially unable to care for himself, and (iii) that less restrictive alternatives to institutional confinement and treatment have been investigated and are deemed suitable, the judge shall order outpatient treatment, day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to § 37.1-134.5, or such other appropriate course of treatment as may be necessary to meet the needs of the individual. Upon failure of the patient to adhere to the terms of the outpatient treatment, the judge may revoke the same and, upon notice to the patient and after a commitment hearing, order involuntary commitment for treatment at a hospital. The community services board which serves the political subdivision in which the person resides shall recommend a specific course of treatment and programs for provision of such treatment. The community services board shall monitor the person's compliance with such treatment as may be ordered by the court under this section, and the person's failure to comply with involuntary outpatient treatment as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to § 37.1-67.2 or this section.

The judge shall also order that the relevant medical records of such person be released to the facility or program in which he is placed upon request of the treating physician or director of the facility or program. Except as provided in this section, the relevant medical records, reports, and court documents pertaining to the hearings provided for in this section and § 37.1-67.2 shall be kept confidential by the court if so requested by such person, or his counsel, with access provided only upon court order for good cause shown. Such records, reports, and documents shall not be subject to the Virginia Freedom of Information Act (§ 2.1-340 et seq.). Such person shall be released at the expiration of 180 days unless involuntarily committed by further petition and order of a court as provided herein or such person makes application for treatment on a voluntary basis as provided for in § 37.1-65.

Any person committed pursuant to this section for whom a subsequent commitment order is being sought prior to the expiration of the 180-day commitment period shall not be entitled to a separate preliminary hearing prior to such commitment hearing.

The procedures required by § 37.1-67.2 or by this section shall be followed at such commitment hearing. The judge shall render a decision on such petition after the appointed examiner has presented his report, either orally or in writing, and after the community services board which serves the political subdivision where the person resides has presented a prescreening report, either orally or in writing, with recommendations for that person's placement, care and treatment.

The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order for involuntary commitment to a hospital and a thumbprint of the person who is committed. The thumbprint shall be obtained at the site of the commitment hearing. The copy of the form and the order shall be kept confidential in a separate file and used only for the purpose of conducting a firearms transaction record check authorized by § 18.2-308.2:2.

§ 37.1-129. Clerk to index findings of legal incompetency or restoration of competency; notice to Commissioner, Secretary of Board of Elections and CCRE.

A. A copy of the findings of the court, if the person ~~be~~ is found to be legally incompetent, or restored to competency, shall be filed by the judge with the clerk of the court of the county or city in which deeds are admitted to record. The clerk shall properly index the same in the index to deed books by reference to the order book and page whereon such order is spread and shall immediately notify the Commissioner in accordance with § 37.1-147, and the Secretary of the State Board of Elections with such information as required by ~~§ 24.1-26.1~~ 24.2-410 of this Code.

B. *The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order adjudicating a person legally incompetent pursuant to § 37.1-128.02 or § 37.1-134 or mentally incapacitated under § 37.1-128.1 or § 37.1-134.2 and any order of restoration of competency or capacity under § 37.1-134.1. The copy of the form and the order shall be kept confidential in a separate file and used only for the purpose of conducting a firearms transaction record check authorized by § 18.2-308.2:2.*