

LD1966843

## HOUSE BILL NO. 2493

Offered January 23, 1995

*A BILL to amend and reenact §§ 16.1-253.1, 16.1-253.4, as it is currently effective and as it may become effective, and 16.1-279.1 of the Code of Virginia, relating to family abuse; protective orders.*

Patrons—McClure, Katzen, O'Brien and Puller; Senator: Barry

Referred to Committee for Courts of Justice

**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, 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.

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. *If the court does not issue a protective order in such case, the reasons therefor shall be stated in writing and retained with the record of the case.*

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;

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60 2. Prohibition of such contacts between the parties as the judge deems appropriate; and

61 3. Granting the family or household member possession of the premises occupied by the parties to  
62 the exclusion of the respondent; provided, no such grant of possession shall affect title to any real or  
63 personal property.

64 *If the court does not issue a protective order, the reasons therefor shall be stated in writing and*  
65 *retained with the record of the case.*

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

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

72 E. A copy of an emergency protective order issued pursuant to this subsection shall be served upon  
73 the respondent as soon as possible. One copy of the order shall be given to the family or household  
74 member and one copy shall be filed with the written report required by § 19.2-81.3 C. The original copy  
75 shall be forwarded for verification to the judge or magistrate who issued the order and then filed with  
76 the clerk of the juvenile and domestic relations district court within five business days of the issuance of  
77 the order. The clerk shall certify and forward forthwith a copy of the order to the local police  
78 department or sheriff's office which shall, on the date of receipt, enter the name of the person subject to  
79 the order and other appropriate information required by the Department of State Police into the Virginia  
80 crime information network system established and maintained by the Department pursuant to Chapter 2  
81 (§ 52-12 et seq.) of Title 52. If the order is later dissolved or modified, a copy of the dissolution or  
82 modification order shall also be certified, forwarded and entered in the system as described above.

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

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

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

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

96 § 16.1-253.4. (Delayed effective date) Emergency protective orders authorized in certain cases;  
97 penalty.

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

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

106 1. Prohibition against further acts in violation of § 18.2-57.2;

107 2. Prohibition of such contacts between the parties as the judge deems appropriate; and

108 3. Granting the family or household member possession of the premises occupied by the parties to  
109 the exclusion of the respondent; provided, no such grant of possession shall affect title to any real or  
110 personal property.

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

113 *If the court does not issue a protective order, the reasons therefor shall be stated in writing and*  
114 *retained with the record of the case.*

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

119 E. A copy of an emergency protective order issued pursuant to this subsection shall be served upon  
120 the respondent as soon as possible. One copy of the order shall be given to the family or household  
121 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. *If the court does not issue a protective order, the reasons therefor shall be stated in writing and retained with the record of the case.*

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 unless issued pursuant to § 18.2-60.3. 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.