

979016362

HOUSE BILL NO. 1886

Offered January 8, 1997

A BILL to amend the Code of Virginia by adding in Title 19.2 a chapter numbered 9.1, consisting of sections numbered 19.2-152.8, 19.2-152.9, and 19.2-152.10, relating to protective orders for stalking.

Patrons—Moran, Armstrong, Connally, Cooper, Crittenden, Cunningham, Darner, Deeds, Hull, Keating, McEachin, Puller, Tate, Van Landingham and Watts; Senators: Couric, Edwards, Howell, Miller, Y.B., Reynolds, Ticer, Waddell and Whipple

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 19.2 a chapter numbered 9.1, consisting of sections numbered 19.2-152.8, 19.2-152.9, and 19.2-152.10, as follows:

§ 19.2-152.8. Emergency protective orders authorized in cases of stalking.

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 in order to protect the health or safety of any person.

B. When a law-enforcement officer or an allegedly stalked person 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 stalking against the petitioner and (ii) there is probable danger of a further such offense occurring against the petitioner by the respondent, and a warrant for the arrest of the alleged stalker has been issued the judge or magistrate shall issue an *ex parte* emergency protective which may include one or more of the following conditions:

1. Prohibiting further acts of stalking in violation of § 18.2-60.3;

2. Prohibiting such contacts by the respondent with the petitioner or the petitioner's family or household member as the judge or magistrate deems necessary for the health or safety of such persons;

3. Such other conditions as the judge or magistrate deems necessary to prevent further acts of stalking, communication, or other contact by the respondent.

C. An emergency protective order issued pursuant to this section shall expire at 5 p.m. on the next business day that the court is in session or seventy-two hours after issuance, whichever is later. The respondent 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.

D. A law-enforcement officer may request an emergency protective order pursuant to this section orally, in person, or by electronic means. The court may issue a verbal emergency protective order; however, any verbal emergency protective order issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the order or the magistrate, 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 or the allegedly stalked person.

E. A copy of an emergency protective order issued pursuant to this section shall be served upon the respondent as soon as possible and one copy of the order shall be given to the allegedly stalked person when it is issued. As soon as practicable after issuance, the local police or sheriff's department shall enter the name of the person subject to the order, and other appropriate information required by the Virginia Department of State Police, into the Virginia Crime Information Network (VCIN). Upon service of the order, the Department shall enter the date of service into VCIN. 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 court within five business days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be certified, forwarded and entered into the system as described above. Upon request, the clerk shall provide the allegedly stalked person with information regarding the date and time of service.

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

G. As used in this section, a "law-enforcement officer" means any person who is a 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.

§ 19.2-152.9. Preliminary protective orders in cases of stalking.

INTRODUCED

HB1886

60 A. Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable
61 period of time, subjected to stalking and (ii) a warrant has been issued for the arrest of the stalker, the
62 court may issue a preliminary protective order against an alleged stalker in order to protect the health
63 and safety of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown
64 when the petition is supported by an affidavit or sworn testimony before the judge or intake officer.
65 Immediate and present danger of stalking or evidence sufficient to establish probable cause that stalking
66 has recently occurred shall constitute good cause.

67 A protective order issued under this section may include any one or more of the following conditions
68 to be imposed on the respondent:

69 1. Prohibiting further acts of stalking in violation of § 18.2-60.3;

70 2. Prohibiting such contacts by the respondent with the petitioner or the petitioner's family or
71 household member as the court deems necessary for the health or safety of such persons;

72 3. Such other conditions as the court deems necessary to prevent further acts of stalking,
73 communication, or other contact by the respondent.

74 B. A copy of a preliminary protective order shall be served as soon as possible on the alleged
75 stalker. As soon as practicable after issuance, the local police or sheriff's department shall enter the
76 name of the person subject to the order, and other appropriate information required by the Virginia
77 Department of State Police, into the Virginia Crime Information Network (VCIN). Upon service of the
78 order, the Department shall enter the date of service into VCIN. The preliminary order shall specify a
79 date for the full hearing. The hearing shall be held within fifteen days of the issuance of the preliminary
80 order. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of the
81 order and information regarding the date and time of service. The order shall further specify that the
82 person served may at any time file a motion with the court requesting a hearing to dissolve or modify
83 the order. The hearing on the motion shall be given precedence on the docket of the court.

84 Upon receipt of the return of service, the clerk shall certify and forward forthwith a copy of the
85 preliminary protective order to the local police department or sheriff's office which shall, on the date of
86 receipt, enter into VCIN, the date of service and any other required information not previously entered
87 by the Department of State Police. If the order is later dissolved or modified, a copy of the dissolution
88 or modification order shall also be certified, forwarded and entered in the VCIN system as described
89 above.

90 C. The preliminary order is effective upon personal service on the alleged stalker. Except as
91 otherwise provided, a violation of the order shall constitute contempt of court.

92 D. At a full hearing on the petition, the court may issue a protective order pursuant to § 19.2-152.8
93 if the court finds that the petitioner has proven the allegation of stalking by a preponderance of the
94 evidence.

95 § 19.2-152.10. Protective order in cases of stalking.

96 A. Upon the issuance of a warrant for a violation of § 18.2-60.3 or upon a conviction for a violation
97 of § 18.2-60.3, the court may issue a protective order to protect the health and safety of the petitioner.
98 A protective order issued under this section may include any one or more of the following conditions to
99 be imposed on the respondent:

100 1. Prohibiting further acts of stalking in violation of § 18.2-60.3;

101 2. Prohibiting such contacts by the respondent with the petitioner or the petitioner's family or
102 household member as the court deems necessary for the health or safety of such persons;

103 3. Such other conditions as the judge or magistrate deems necessary to prevent further acts of
104 stalking, communication, or other contact by the respondent.

105 B. The protective order may be issued for a specified period; however, unless otherwise authorized
106 by law, a protective order may not be issued under this section for a period longer than two years. The
107 clerk of the court shall certify and forward forthwith a copy of the order to the local police department
108 or sheriff's office which shall, on the date of receipt, enter the name of the person subject to the order
109 and other appropriate information required by the Department of State Police into VCIN. If the order is
110 later dissolved or modified, a copy of the dissolution or modification order shall also be certified,
111 forwarded and entered in the system as described above.

112 C. Except as otherwise provided, a violation of a protective order issued under this section shall
113 constitute contempt of court.

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

116 E. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate
117 jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths,
118 the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing
119 stalking or contact or communication with or physical proximity to another person shall be accorded
120 full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth,
121 provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the

122 person against whom the order is sought to be enforced sufficient to protect such person's due process
123 rights and consistent with federal law. A person entitled to protection under such a foreign order may
124 file the order in any circuit court by filing with the court a certified copy of the order.

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

130 F. Either party may at any time file a written motion with the court requesting a hearing to dissolve
131 or modify the order.