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**HOUSE BILL NO. 1886****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee for Courts of Justice  
on February 2, 1997)

(Patron Prior to Substitute—Delegate Moran)

*A BILL to amend and reenact § 16.1-106, as it is currently effective and as it may become effective, and § 16.1-298 of the Code of Virginia and 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.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 16.1-106, as it is currently effective and as it may become effective, and § 16.1-298 of the Code of Virginia are amended and reenacted and 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:**

§ 16.1-106. Appeals from courts not of record in civil cases.

From any order entered or judgment rendered in a court not of record in a civil case in which the matter in controversy is of greater value than fifty dollars, exclusive of interest, any attorney's fees contracted for in the instrument, and costs, or when the case involves the constitutionality or validity of a statute of the Commonwealth, or of an ordinance or bylaw of a municipal corporation, or of the enforcement of rights and privileges conferred by the Virginia Freedom of Information Act (§ 2.1-340 et seq.), *or of a protective order pursuant to § 19.2-152.10*, there shall be an appeal of right, if taken within ten days after such order or judgment, to a court of record. Such appeal shall be to a court of record having jurisdiction within the territory of the court from which the appeal is taken.

The court from which an appeal is sought may refuse to suspend the execution of a judgment which refuses, grants, modifies, or dissolves an injunction in a case brought pursuant to § 2.1-346 of the Virginia Freedom of Information Act. *A protective order issued pursuant to § 19.2-152.10 shall remain in effect upon petition for or the pendency of an appeal or writ of error unless ordered suspended by the judge of a circuit court or so directed in a writ of supersedeas by the Court of Appeals or the Supreme Court.*

§ 16.1-106. (Delayed effective date) Appeals from general district courts in civil cases.

From any order entered or judgment rendered in a general district court in a civil case in which the matter in controversy is of greater value than fifty dollars, exclusive of interest, any attorney's fees contracted for in the instrument, and costs, or when the case involves the constitutionality or validity of a statute of the Commonwealth, or of an ordinance or bylaw of a municipal corporation, or of the enforcement of rights and privileges conferred by the Virginia Freedom of Information Act (§ 2.1-340 et seq.), *or of a protective order pursuant to § 19.2-152.10*, there shall be an appeal of right, if taken within ten days after such order or judgment, to a court of record. Such appeal shall be to a court of record having jurisdiction within the territory of the court from which the appeal is taken.

The court from which an appeal is sought may refuse to suspend the execution of a judgment which refuses, grants, modifies, or dissolves an injunction in a case brought pursuant to § 2.1-346 of the Virginia Freedom of Information Act. *A protective order issued pursuant to § 19.2-152.10 shall remain in effect upon petition for or the pendency of an appeal or writ of error unless ordered suspended by the judge of a circuit court or so directed in a writ of supersedeas by the Court of Appeals or the Supreme Court.*

§ 16.1-298. Effect of petition for or pendency of appeal; bail.

A. Except as provided herein, a petition for or the pendency of an appeal or writ of error shall not suspend any judgment, order or decree of the juvenile court nor operate to discharge any child concerned or involved in the case from the custody of the court or other person, institution or agency to which the child has been committed unless so ordered by the judge of the juvenile court, the judge of a circuit court or directed in a writ of supersedeas by the Court of Appeals or the Supreme Court or a judge or justice thereof.

B. The judgment, order or decree of the juvenile court shall be suspended upon a petition for or the pendency of an appeal or writ of error:

1. In cases of delinquency in which the final order of the juvenile court is pursuant to subdivision 8, 9, 10, 12, 14, or 15 of § 16.1-278.8.

2. In cases involving a child and any local ordinance.

3. In cases involving any person over the age of eighteen years.

Such suspension as is provided for in this subsection shall not apply to (i) an order for support of a spouse, parent or child or to a preliminary protective order issued pursuant to § 16.1-253, (ii) an order

60 disposing of a motion to reconsider relating to participation in continuing programs pursuant to  
61 § 16.1-289.1, ~~or~~ (iii) a protective order in cases of family abuse issued pursuant to § 16.1-279.1 or (iv) a  
62 protective order issued pursuant to § 19.2-152.10, unless so ordered by the judge of a circuit court or  
63 directed in a writ of supersedeas by the Court of Appeals or the Supreme Court.

64 C. In cases where the order of the juvenile court is suspended pursuant to subsection B hereof or by  
65 order of the juvenile court or the circuit court, bail may be required as provided for in § 16.1-135.

66 § 19.2-152.8. *Emergency protective orders authorized in cases of stalking.*

67 A. Any judge of a circuit court, general district court, juvenile and domestic relations district court  
68 or magistrate may issue an *ex parte* emergency protective order pursuant to this section in order to  
69 protect the health or safety of any person.

70 B. When a law-enforcement officer or an allegedly stalked person asserts under oath to a judge or  
71 magistrate, and on that assertion or other evidence the judge or magistrate finds reasonable grounds to  
72 believe, that (i) the respondent has committed stalking against the petitioner and (ii) there is probable  
73 danger of a further such offense occurring against the petitioner by the respondent, and a warrant for  
74 the arrest of the alleged stalker has been issued the judge or magistrate shall issue an *ex parte*  
75 emergency protective which may include one or more of the following conditions:

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

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

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

81 C. An emergency protective order issued pursuant to this section shall expire at 5 p.m. on the next  
82 business day that the court is in session or seventy-two hours after issuance, whichever is later. The  
83 respondent may at any time file a motion with the court requesting a hearing to dissolve or modify the  
84 order. The hearing on the motion shall be given precedence on the docket of the court.

85 D. A law-enforcement officer may request an emergency protective order pursuant to this section  
86 orally, in person, or by electronic means. The judicial officer may issue a verbal emergency protective  
87 order; however, any verbal emergency protective order issued pursuant to this section shall be reduced  
88 to writing, by the law-enforcement officer requesting the order or the magistrate, on a preprinted form  
89 approved and provided by the Supreme Court of Virginia. The completed form shall include a statement  
90 of the grounds for the order asserted by the officer or the allegedly stalked person.

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

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

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

110 § 19.2-152.9. *Preliminary protective orders in cases of stalking.*

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

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

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

121 2. Prohibiting such contacts by the respondent with the petitioner or the petitioner's family or

household member as the court deems necessary for the health or safety of such persons;

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

B. A copy of a preliminary protective order shall be served as soon as possible on the alleged stalker. 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), and upon service, shall enter the date and time of service into VCIN. The preliminary order shall specify a date for the full hearing. The hearing shall be held within fifteen days of the issuance of the preliminary order. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of the order and information regarding the date and time of service. 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 the return of service of orders served pursuant to subsection C of § 16.1-264, the clerk shall certify and forward forthwith a copy of the preliminary protective order to the local police department or sheriff's office which shall, on the date of receipt, enter into VCIN, the date and time of service and any other information required by the Department of State Police and not previously entered. 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 VCIN system as described above.

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

D. At a full hearing on the petition, the court may issue a protective order pursuant to § 19.2-152.10 if the court finds that the petitioner has proven the allegation of stalking by a preponderance of the evidence.

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

A. Upon the issuance of a warrant for a violation of § 18.2-60.3, or upon a hearing held pursuant to subsection D of § 19.2-152.9 or upon a conviction for a violation of § 18.2-60.3, the court may issue a protective order to protect the health and safety of the petitioner. 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 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 court 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.

B. The protective order may be issued for a specified period; however, unless otherwise authorized by law, a protective order may not be issued under this section for a period longer than two years. The clerk of the court 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 VCIN. 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. Except as otherwise provided, a violation of a protective order issued under this section shall constitute contempt of court.

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

E. 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 stalking or contact or communication with or physical proximity to another person shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such person's due process rights and consistent with federal law. A person entitled to protection under such a foreign order may file the order in any circuit court by filing with the court a certified copy of the order.

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

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