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HOUSE BILL NO. 1886

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 13, 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

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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 family abuse.*

67 A. Any judge of a circuit court, general district court, juvenile and domestic relations district court
68 or magistrate may issue a written or oral *ex parte* emergency protective order pursuant to this section
69 in order to 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 that (i) the respondent
72 has committed stalking against the petitioner, (ii) there is probable danger of a further such offense
73 being committed by the respondent against the petitioner and (iii) a warrant for the arrest of the
74 respondent has been issued, the judge or magistrate shall issue an *ex parte* emergency protective order
75 imposing one or more of the following conditions on the respondent:

76 1. Prohibiting 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 members as the judge or magistrate deems necessary to protect the safety of such persons;
79 and

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

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

87 D. A law-enforcement officer may request an emergency protective order pursuant to this section
88 orally, in person or by electronic means, and the judge of a circuit court, general district court, or
89 juvenile and domestic relations district court or a magistrate may issue an oral emergency protective
90 order. An oral emergency protective order issued pursuant to this section shall be reduced to writing, by
91 the law-enforcement officer requesting the order or the magistrate, on a preprinted form approved and
92 provided by the Supreme Court of Virginia. The completed form shall include a statement of the
93 grounds for the order asserted by the officer or the allegedly stalked person.

94 E. As soon as practicable after receipt of the order by a local law-enforcement agency for service,
95 the agency shall enter the name of the person subject to the order and other appropriate information
96 required by the Department of State Police into the Virginia crime information network system
97 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. A
98 copy of an emergency protective order issued pursuant to this section shall be served upon the
99 respondent as soon as possible, and upon service, the agency making service shall enter the date and
100 time of service into the Virginia crime information network system. One copy of the order shall be given
101 to the allegedly stalked person when it is issued. The original copy shall be forwarded for verification to
102 the judge or magistrate who issued the order and then filed with the clerk of the general district court
103 within five business days of the issuance of the order. If the order is later dissolved or modified, a copy
104 of the dissolution or modification order shall also be attested, forwarded and entered in the system as
105 described above. Upon request, the clerk shall provide the allegedly stalked person with information
106 regarding the date and time of service.

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

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

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

116 §19.2-152.9. *Preliminary protective orders in cases of family abuse.*

117 A. Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable
118 period of time, subjected to stalking and (ii) a warrant has been issued for the arrest of the alleged
119 stalker, the court may issue a preliminary protective order against the alleged stalker in order to protect
120 the health and safety of the petitioner or any family or household member of the petitioner. The order
121 may be issued in an *ex parte* proceeding upon good cause shown when the petition is supported by an

122 affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of stalking
123 or evidence sufficient to establish probable cause that stalking has recently occurred shall constitute
124 good cause.

125 A preliminary protective order may include any one or more of the following conditions to be
126 imposed on the respondent:

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

128 2. Prohibiting such other contacts by the respondent with the petitioner or the petitioner's family or
129 household members as the court deems necessary for the health and safety of such persons.

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

132 B. As soon as practicable after receipt of the order by a local law-enforcement agency for service,
133 the agency shall enter the name of the person subject to the order and other appropriate information
134 required by the Department of State Police into the Virginia crime information network system
135 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. A
136 copy of a preliminary protective order shall be served as soon as possible on the alleged stalker in
137 person as provided in § 16.1-264, and upon service, the agency making service shall enter the date and
138 time of service into the Virginia crime information network system. The preliminary order shall specify a
139 date for the full hearing. The hearing shall be held within fifteen days of the issuance of the preliminary
140 order. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of the
141 order and information regarding the date and time of service. The order shall further specify that the
142 person served may at any time file a motion with the court requesting a hearing to dissolve or modify
143 the order. The hearing on the motion shall be given precedence on the docket of the court.

144 Upon receipt of the return of service or other proof of service pursuant to § 16.1-264, the clerk shall
145 forward forthwith an attested copy of the preliminary protective order to the local police department or
146 sheriff's office which shall, on the date of receipt, enter into the Virginia crime information network
147 system any other information required by the State Police which was not previously entered. If the order
148 is later dissolved or modified, a copy of the dissolution or modification order shall also be attested,
149 forwarded and entered into the Virginia crime information network system as described above.

150 C. The preliminary order is effective upon personal service on the alleged stalker person. Except as
151 otherwise provided in § 16.1-253.2, a violation of the order shall constitute contempt of court.

152 D. At a full hearing on the petition, the court may issue a protective order pursuant to §
153 19.2-152.10 if the court finds that the petitioner has proven the allegation of stalking by a
154 preponderance of the evidence.

155 E. No fees shall be charged for filing or serving petitions pursuant to this section.
156 § 19.2-152.10. Protective order in cases of stalking.

157 A. The court may issue a protective order pursuant to this chapter to protect the health and safety of
158 the petitioner and family or household members of a petitioner upon (i) the issuance of a warrant for a
159 violation of § 18.2-60.3, (ii) a hearing held pursuant to subsection D of § 19.2-152.9 or (iii) a
160 conviction for a violation of § 18.2-60.3. A protective order issued under this section may include any
161 one or more of the following conditions to be imposed on the respondent:

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

163 2. Prohibiting such contacts by the respondent with the petitioner or family or household members of
164 the petitioner as the court deems necessary for the health or safety of such persons;

165 3. Any other relief necessary to prevent further acts of stalking, communication or other contact by
166 the respondent.

167 B. The protective order may be issued for a specified period; however, unless otherwise authorized
168 by law, a protective order may not be issued under this section for a period longer than two years. The
169 clerk shall forward forthwith an attested copy of the order to the local police department or sheriff's
170 office which shall, on the date of receipt, enter the name of the person subject to the order and other
171 appropriate information required by the Department of State Police into the Virginia crime information
172 network system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.)
173 of Title 52. If the order is later dissolved or modified, a copy of the dissolution or modification order
174 shall also be attested, forwarded and entered into the system as described above.

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

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

179 E. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate
180 jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths,
181 the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing
182 violent or threatening acts or harassment against or contact or communication with or physical

183 *proximity to another person, including any of the conditions specified in subsection A, shall be accorded*
184 *full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth,*
185 *provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the*
186 *person against whom the order is sought to be enforced sufficient to protect such person's due process*
187 *rights and consistent with federal law. A person entitled to protection under such a foreign order may*
188 *file the order in any appropriate district court by filing with the court, an attested or exemplified copy*
189 *of the order. Upon such a filing, the clerk shall forward forthwith an attested copy of the order to the*
190 *local police department or sheriff's office which shall, on the date of receipt, enter the name of the*
191 *person subject to the order and other appropriate information required by the Department of State*
192 *Police into the Virginia crime information network system established and maintained by the Department*
193 *pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52.*

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

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

201 *G. No fees shall be charged for filing or serving petitions pursuant to this section.*