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HOUSE BILL NO. 2071

Offered January 14, 1997

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, 16.1-279.1 and 19.2-81.3 of the Code of Virginia, relating to protective orders.*

Patrons—Watts, Cranwell, Melvin and Puller; Senators: Houck, Howell and Stolle

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, 16.1-279.1 and 19.2-81.3 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 protective order against an allegedly abusing person in order to protect the health and safety of the petitioner or any family or household member of the petitioner. The 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 or evidence sufficient to establish probable cause that family abuse has recently occurred shall constitute good cause.

A preliminary protective order may include any one or more of the following conditions to be imposed on the allegedly abusing person:

1. Prohibiting acts of family abuse.

2. Prohibiting such other contacts between the parties as the court deems appropriate.

3. Prohibiting 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 premises 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. Granting the petitioner temporary possession or use of a motor vehicle jointly owned by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession or use shall affect title to the vehicle.

6. 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 a preliminary protective order shall be served as soon as possible on the allegedly abusing person in person as provided in § 16.1-264. *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 Department of State Police and upon service, shall enter the date of service into the Virginia crime information network system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52.* 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, 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 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 *the date of service and any other information required by the State Police which was 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 *Virginia crime information system* as described above.

C. The preliminary order is effective upon personal service on the allegedly abusing person. Except as otherwise provided in § 16.1-253.2, 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 § 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 cases of family abuse.

INTRODUCED

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60 A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or
61 magistrate may issue a written or verbal ex parte emergency protective order pursuant to this section in
62 order to protect the health or safety of any person.

63 B. When a law-enforcement officer or an allegedly abused person asserts under oath to a judge or
64 magistrate, and on that assertion or other evidence the judge or magistrate finds reasonable grounds to
65 believe that (i) the respondent has committed family abuse and ~~(ii) there is probable danger of a further~~
66 such offense against a family or household member by the respondent *or (ii) a warrant for a violation*
67 *of § 18.2-57.2 has been issued and there is probable danger of further acts of family abuse against a*
68 *family or household member by the respondent*, the judge or magistrate shall issue a ~~written or verbal~~ *an*
69 ex parte emergency protective order imposing one or more of the following conditions on the
70 respondent:

71 1. Prohibiting acts of family abuse;

72 2. Prohibiting such contacts by the respondent with family or household members of the respondent
73 as the judge or magistrate deems necessary to protect the safety of such persons; and

74 3. Granting the family or household member possession of the premises occupied by the parties to
75 the exclusion of the respondent; however, no such grant of possession shall affect title to any real or
76 personal property.

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

82 D. *A law-enforcement officer may request an emergency protective order pursuant to this section*
83 *orally, in person or by electronic means and the court may issue a verbal emergency protective order.*

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

88 E. A copy of an emergency protective order issued pursuant to this section shall be served upon the
89 respondent as soon as possible. *As soon as practicable after issuance, the local police or sheriff's*
90 *department shall enter the name of the person subject to the order and other appropriate information*
91 *required by the Department of State Police and, upon service, shall enter the date of service, into the*
92 *Virginia crime information network system established and maintained by the Department pursuant to*
93 *Chapter 2 (§ 52-12 et seq.) of Title 52.* One copy of the order shall be given to the allegedly abused
94 person when it is issued and one copy shall be filed with the written report required by § 19.2-81.3 C.
95 The original copy shall be forwarded for verification to the judge or magistrate who issued the order and
96 then filed with the clerk of the juvenile and domestic relations district court within five business days of
97 the issuance of the order. ~~The clerk shall certify and forward forthwith a copy of the order to the local~~
98 ~~police department or sheriff's office which shall, on the date of receipt, enter the name of the person~~
99 ~~subject to the order and other appropriate information required by the Department of State Police into~~
100 ~~the Virginia crime information network system established and maintained by the Department pursuant~~
101 ~~to Chapter 2 (§ 52-12 et seq.) of Title 52.~~ If the order is later dissolved or modified, a copy of the
102 dissolution or modification order shall also be certified, forwarded and entered in the system as
103 described above. Upon request, the clerk shall provide the allegedly abused person with information
104 regarding the date and time of service.

105 F. The availability of an emergency protective order shall not be affected by the fact that the family
106 or household member left the premises to avoid the danger of family abuse by the respondent.

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

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

115 § 16.1-253.4. (Delayed effective date) Emergency protective orders authorized in certain cases;
116 penalty.

117 A. Any judge of a circuit court, general district court, family court or magistrate may issue a written
118 or verbal ex parte emergency protective order pursuant to this section in order to protect the health or
119 safety of any person. *Only a law-enforcement officer may request issuance of a verbal ex parte order.*

120 B. When a law-enforcement officer or an allegedly abused person asserts under oath to a judge or
121 magistrate, and on that assertion or other evidence the judge or magistrate finds reasonable grounds to

believe that (i) the respondent has committed family abuse and (ii) there is probable danger of a further such offense against a family or household member by the respondent *or (ii) the respondent has committed assault and battery against a family or household member*, 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. Prohibiting acts of family abuse;
2. Prohibiting such contacts by the respondent with family or household members as the judge or magistrate deems necessary to protect the safety of such persons; and
3. Granting the family or household member possession of the premises occupied by the parties to the exclusion of the respondent; however, 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 at 5 p.m. on the next business day that the ~~juvenile and domestic relations~~ family court sits in the jurisdiction 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 verbal emergency protective order issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the order or by 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 abused person.

E. A copy of an emergency protective order issued pursuant to this section shall be served upon the respondent as soon as possible. *As soon as practicable after service, 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 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.* One copy of the order shall be given to the allegedly abused person when it is issued 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. Upon request, the clerk shall provide the allegedly abused person with information regarding the date and time of service.

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 family abuse by the respondent.

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

H. 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. Protective order in cases of family abuse.

A. In cases of family abuse, the court may issue a protective order to protect the health and safety of the petitioner and family or household members 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 acts of family abuse;
2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons;
3. Granting the petitioner possession of the residence occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property;
4. Granting the petitioner temporary possession or use of a motor vehicle jointly owned by the parties to the exclusion of the respondent; however, no such grant of possession or use shall affect title to the vehicle;
5. Requiring that the respondent provide suitable alternative housing for the petitioner and, if appropriate, any other family or household member;
6. Ordering the respondent to participate in treatment, counseling or other programs as the court

183 deems appropriate; and

184 7. Any other relief necessary for the protection of the petitioner and family or household members of
185 the petitioner, including a provision for temporary custody or visitation of a minor child.

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

194 C. Except as otherwise provided in § 16.1-253.2, a violation of a protective order issued under this
195 section shall constitute contempt of court.

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

198 E. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate
199 jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths,
200 the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing
201 violent or threatening acts or harassment against or contact or communication with or physical proximity
202 to another person, including any of the conditions specified in subsection A, shall be accorded full faith
203 and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided
204 reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person
205 against whom the order is sought to be enforced sufficient to protect such person's due process rights
206 and consistent with federal law. A person entitled to protection under such a foreign order may file the
207 order in any juvenile and domestic relations district court or family court by filing with the court a
208 certified copy of the order and an affidavit, under oath, that to the best of such person's knowledge the
209 order is then in effect as written and upon such filing shall be enforceable as an order entered pursuant
210 to this section.

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

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

218 § 19.2-81.3. Arrest without a warrant authorized in cases of assault and battery against a family or
219 household member and for violations of protective orders; procedure, etc.

220 A. Any law-enforcement officer, as defined in § 19.2-81, may arrest without a warrant for an alleged
221 violation of § 18.2-57.2 or § 16.1-253.2 regardless of whether such violation was committed in his
222 presence, if such arrest is based on probable cause or upon personal observations or the reasonable
223 complaint of a person who observed the alleged offense or upon personal investigation.

224 B. A law-enforcement officer having probable cause to believe that a violation of § 18.2-57.2 or a
225 violation of § 16.1-253.2 has occurred shall arrest and take into custody the person he has probable
226 cause to believe, based on the totality of the circumstances, was the primary physical aggressor unless
227 there are special circumstances which would dictate a course of action other than an arrest.

228 C. Regardless of whether an arrest is made, the officer shall file a written report with his department
229 of any incident in which he has probable cause to believe family abuse has occurred, including, where
230 required, a statement in writing that there are special circumstances which would dictate a course of
231 action other than an arrest. Upon request of the allegedly abused person, the officer shall make a copy
232 of the *summary* report *shall be made* available to the allegedly abused person. The officer shall also
233 provide the allegedly abused person, both orally and in writing, information regarding the legal and
234 community resources available to the allegedly abused person.

235 D. In every case in which a law-enforcement officer makes an arrest under this section, he shall
236 petition for an emergency protective order as authorized in § 16.1-253.4 when the person arrested and
237 taken into custody is brought before the magistrate. Regardless of whether an arrest is made, if the
238 officer has probable cause to believe that a danger of acts of family abuse exists, the law-enforcement
239 officer shall seek an emergency protective order under § 16.1-253.4.

240 E. A law-enforcement officer investigating any complaint of family abuse, including but not limited
241 to assault and battery against a family or household member may, upon request, transport, or arrange for
242 the transportation of an abused person to a hospital, safe shelter, or magistrate. Any local
243 law-enforcement agency may adopt a policy requiring an officer to transport or arrange for
244 transportation of an abused person as provided in this subsection.

245 F. As used in this section, "family or household member" means (i) the person's spouse, whether or
246 not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not
247 he or she resides in the same home with the person, (iii) the person's parents, stepparents, children,
248 stepchildren, brothers and sisters, grandparents and grandchildren who reside in the same home with the
249 person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and
250 sisters-in-law who reside in the same home with the person, (v) any person who has a child in common
251 with the defendant, whether or not the person and that person have been married or have resided
252 together at any time, or (vi) any individual who cohabits or who, within the previous twelve months,
253 cohabited with the person, and any children of either of them then residing in the same home with the
254 defendant.

255 G. As used in this section, a "law-enforcement officer" means (i) any full-time or part-time employee
256 of a police department or sheriff's office which is part of or administered by the Commonwealth or any
257 political subdivision thereof, and who is responsible for the prevention and detection of crime and the
258 enforcement of the penal, traffic or highway laws of this Commonwealth and (ii) any member of an
259 auxiliary police force established pursuant to subsection B of § 15.1-159.2. Part-time employees are
260 compensated officers who are not full-time employees as defined by the employing police department or
261 sheriff's office.