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HOUSE BILL NO. 2071

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 Watts)

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, 18.2-57.2 and 19.2-81.3 of the Code of Virginia, relating to protective orders.*

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, 18.2-57.2 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. *As soon as practicable after receipt of the order by a local law-enforcement agency for service, the agency 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. 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, and upon service, the agency making service shall enter the date and time of service into the Virginia crime information network system. 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 *or other proof of service pursuant to § 16.1-264*, the clerk shall ~~certify and~~ forward forthwith a *an attested* 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~~ 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~~ attested, forwarded and entered in the Virginia crime information network 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.

60 § 16.1-253.4. Emergency protective orders authorized in cases of family abuse.

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

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

72 1. Prohibiting acts of family abuse;

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

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

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

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

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

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

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

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

118 § 16.1-253.4. (Delayed effective date) Emergency protective orders authorized in certain cases;
119 penalty.

120 A. Any judge of a circuit court, general district court, family court or magistrate may issue a written
121 or ~~verbal~~ oral 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 abused person asserts under oath to a judge or magistrate, and on that assertion or other evidence the judge or magistrate finds *that (i) a warrant for a violation of § 18.2-57.2 has been issued and there is probable danger of further acts of family abuse against a family or household member by the respondent or (ii) reasonable grounds exist 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, the judge or magistrate may issue a ~~written or verbal~~ *an 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 law-enforcement officer may request an emergency protective order pursuant to this section orally, in person or by electronic means, and the judge of a circuit court, general district court, or family court or a magistrate may issue an oral emergency protective order.* ~~A verbal~~ An oral 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. *As soon as practicable after receipt of the order by a local law-enforcement agency for service, the agency 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.* A copy of an emergency protective order issued pursuant to this section shall be served upon the respondent as soon as possible, *and upon service, the agency making service shall enter the date and time of service, into the Virginia crime information network system.* 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~~ *attested*, 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 deems appropriate; and

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

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 shall ~~certify and~~ forward forthwith a *an attested* 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~~ *attested*, forwarded and entered in the system as described above.

C. Except as otherwise provided in § 16.1-253.2, a violation of a protective order 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.

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 violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, 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 juvenile and domestic relations district court or family court by filing with the court a ~~certified, an attested or exemplified~~ copy of the order and an affidavit, under oath, that to the best of such person's knowledge the order is then in effect as written and upon such filing shall be enforceable as an order entered pursuant to this section. *Upon such a filing, the clerk shall forward forthwith an attested 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.*

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.

§ 18.2-57.2. (Effective July 1, 1997) Assault and battery against a family or household member.

A. Any person who commits an assault and battery against a family or household member shall be guilty of a Class 1 misdemeanor.

B. On a third or subsequent conviction for assault and battery against a family or household member, where it is alleged in the warrant, information, or indictment on which a person is convicted, that (i) such person has been previously convicted twice of assault and battery against a family or household member, or of a similar offense under the law of any other jurisdiction, within ten years of the third or subsequent offense, and that (ii) each such assault and battery occurred on different dates, such person shall be guilty of a Class 6 felony.

C. Whenever a warrant for a violation of ~~§ 18.2-57.2~~ *this section* is issued, the magistrate shall issue an emergency protective order as authorized by § 16.1-253.4 ~~when the person arrested and taken into custody is brought before the magistrate.~~

D. As used in this section, "family or household member" means (i) the defendant's spouse, whether

or not he or she resides in the same home with the defendant; (ii) the defendant's former spouse, whether or not he or she resides in the same home with the defendant; (iii) the defendant's parents, stepparents, children, stepchildren, brothers and sisters, grandparents and grandchildren who reside in the same home with the defendant; (iv) the defendant's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the defendant; (v) any person who has a child in common with the defendant, whether or not the defendant and that person have been married or have resided together at any time; or (vi) any individual who cohabits or who, within the previous twelve months, cohabited with the defendant, and any children of either of them then residing in the same home with the defendant.

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

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

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

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

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

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

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

G. As used in this section, a "law-enforcement officer" means (i) 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 this Commonwealth and (ii) any member of an auxiliary police force established pursuant to subsection B of § 15.1-159.2. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.