VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 569

An Act to amend and reenact §§ 18.2-119, 18.2-308.1:4, 19.2-81.3, 19.2-152.8, 19.2-152.9, and 19.2-152.10 of the Code of Virginia and to amend the Code of Virginia by adding in Article 6 of Chapter 4 of Title 18.2 a section numbered 18.2-60.4, relating to stalking protective orders; penalty.

[H 391]

Approved April 15, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-119, 18.2-308.1:4, 19.2-81.3, 19.2-152.8, 19.2-152.9, and 19.2-152.10 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 6 of Chapter 4 of Title 18.2 a section numbered 18.2-60.4 as follows:

§ 18.2-60.4. Violation of stalking protective orders; penalty.

Any person who violates any provision of a protective order issued pursuant to §§ 19.2-152.8, 19.2-152.9 or § 19.2-152.10 is guilty of a Class 1 misdemeanor. Conviction hereunder shall bar a finding of contempt for the same act.

§ 18.2-119. Trespass after having been forbidden to do so; penalties.

If any person without authority of law goes upon or remains upon the lands, buildings or premises of another, or any portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian or other person lawfully in charge thereof, or after having been forbidden to do so by a sign or signs posted by such persons or by the holder of any easement or other right-of-way authorized by the instrument creating such interest to post such signs on such lands, structures, premises or portion or area thereof at a place or places where it or they may be reasonably seen, or if any person, whether he is the owner, tenant or otherwise entitled to the use of such land, building or premises, goes upon, or remains upon such land, building or premises after having been prohibited from doing so by a court of competent jurisdiction by an order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-278.2 through 16.1-278.6, 16.1-278.8, 16.1-278.14, 16.1-278.15, ~~or §~~ 16.1-279.1, *19.2-152.8, 19.2-152.9, or § 19.2-152.10* or an ex parte order issued pursuant to § 20-103, and after having been served with such order, he shall be guilty of a Class 1 misdemeanor. This section shall not be construed to affect in any way the provisions of §§ 18.2-132 through 18.2-136.

§ 18.2-308.1:4. Purchase or transportation of firearm by persons subject to protective orders; penalty.

A. It shall be unlawful for any person who is subject to (i) a protective order entered pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, ~~or §~~ 16.1-279.1, *19.2-152.8, 19.2-152.9, or § 19.2-152.10;* (ii) an order issued pursuant to subsection b of § 20-103*;* or (iii) an order entered pursuant to subsection E of § 18.2-60.3 to purchase or transport any firearm while the order is in effect. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

B. Any firearm purchased or transported in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.

§ 19.2-81.3. Arrest without a warrant authorized in cases of assault and battery against a family or household member and stalking 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*, 18.2-60.4* 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 department shall make a 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~~ *15.2-1731*. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

§ 19.2-152.8. 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 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 stalked person asserts under oath to a judge or magistrate that such person is being or has been subjected to stalking and on that assertion or other evidence the judge or magistrate finds that (i) there is probable danger of a further such offense being committed by the respondent against the ~~petitioner~~ *allegedly stalked person*, and (ii) a warrant for the arrest of the respondent has been issued, the judge or magistrate shall issue an ex parte emergency protective order imposing one or more of the following conditions on the respondent:

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

2. Prohibiting such contacts by the respondent with the ~~petitioner~~ *allegedly stalked person* or ~~the petitioner's~~ *such person's* family or household members as the judge or magistrate deems necessary to protect the safety of such persons; and

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~~. *If the expiration of the seventy-two-hour period occurs at a time that the court is not in session, the emergency protective order shall be extended until 5 p.m. of the next business day that the court which issued the order is in session.* 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 juvenile and domestic relations district court or a magistrate may issue an oral emergency protective order. An oral 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. 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~~ *criminal* 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~~ *criminal* information network system. One copy of the order shall be given to the allegedly stalked person ~~when it is issued~~. The original copy shall be ~~forwarded for verification to~~ *verified by* the judge or magistrate who issued the order and then filed with the clerk of the ~~general~~ *appropriate* district 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 attested, forwarded and entered in 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 *(i)* 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 *and (ii) member of an auxiliary police force established pursuant to subsection B of § 15.2-1731*. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

H. As used in this section, "copy" includes a facsimile copy.

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

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

A. Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable period of time, subjected to stalking and (ii) a warrant has been issued for the arrest of the alleged stalker, the court may issue a preliminary protective order against the alleged stalker 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 stalking or evidence sufficient to establish probable cause that stalking 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 respondent:

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

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

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

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~~ *criminal* information network system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. *Where feasible and practical, the court may transfer information electronically to the Virginia criminal information network system.* A copy of a preliminary protective order shall be served as soon as possible on the alleged stalker 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~~ *criminal* 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~~ *either party* 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 *subsection C of* § 16.1-264, the clerk shall forward forthwith 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 into the Virginia ~~crime~~ *criminal* information network system 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 attested, forwarded and entered into the Virginia ~~crime~~ *criminal* information network system as described above.

C. The preliminary order is effective upon personal service on the alleged stalker. 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 § 19.2-152.10 if the court finds that the petitioner has proven the allegation of stalking by a preponderance of the evidence.

E. No fees shall be charged for filing or serving petitions pursuant to this section.

F. As used in this section, "copy" includes a facsimile copy.

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

A. The court may issue a protective order pursuant to this chapter to protect the health and safety of the petitioner and family or household members of a petitioner upon (i) the issuance of a warrant for a violation of § 18.2-60.3, (ii) a hearing held pursuant to subsection D of § 19.2-152.9, or (iii) a conviction for a violation of § 18.2-60.3. 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 family or household members of

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

3. Any other relief 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. *A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible.* 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~~ *criminal* information network system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. *Where feasible and practical, the court may transfer information electronically to the Virginia criminal information network system.* If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded and entered into 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 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 appropriate district court by filing with the court, an attested or exemplified copy of the order. 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~~ *criminal* 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. *Proceedings to modify or dissolve a protective order shall be given precedence on the docket of the court.*

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

H. As used in this section, "copy" includes a facsimile copy.