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HOUSE BILL NO. 291

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 25, 1998)

(Patron Prior to Substitute—Delegate Clement)

A BILL to amend and reenact § 16.1-253.4 of the Code of Virginia, as it is currently effective and as it may become effective, relating to protective orders; extension of emergency order.

Be it enacted by the General Assembly of Virginia:

1. That §16.1-253.4 of the Code of Virginia, as it is currently effective and as it may become effective, is amended and reenacted as follows:

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

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 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 the respondent has committed family abuse and there is probable danger of a further such offense against a family or household member by the respondent, 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 family abuse;

2. Prohibiting such contacts by the respondent with family or household members of the respondent 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 court is in session 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 and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant to § 16.2-253.1 or § 16.1-279.1, may request the extension of an emergency protective order for an additional period of time not to exceed seventy-two hours after expiration of the original order. The request for an emergency protective order or extension of an order may be made 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 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 juvenile and domestic relations 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 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.

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

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

68 § 16.1-253.4. (Delayed effective date) Emergency protective orders authorized in certain cases;
69 penalty.

70 A. Any judge of a circuit court, general district court, family court or magistrate may issue a written
71 or oral ex parte emergency protective order pursuant to this section in order to protect the health or
72 safety of any person.

73 B. When a law-enforcement officer or an allegedly abused person asserts under oath to a judge or
74 magistrate, and on that assertion or other evidence the judge or magistrate finds that (i) a warrant for a
75 violation of § 18.2-57.2 has been issued and there is probable danger of further acts of family abuse
76 against a family or household member by the respondent or (ii) reasonable grounds exist to believe that
77 the respondent has committed family abuse and there is probable danger of a further such offense
78 against a family or household member by the respondent, the judge or magistrate may issue an ex parte
79 emergency protective order imposing one or more of the following conditions on the respondent:

80 1. Prohibiting acts of family abuse;

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

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

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

90 D. A law-enforcement officer may request an emergency protective order pursuant to this section
91 *and, if the person in need of protection is physically or medically incapable of filing a petition pursuant*
92 *to § 16.2-253.1 or § 16.1-279.1, may request the extension of an emergency protective order for an*
93 *additional period of time not to exceed seventy-two hours after expiration of the original order. The*
94 *request for an emergency protective order or extension of an order may be made orally, in person or by*
95 *electronic means, and the judge of a circuit court, general district court, or family court or a magistrate*
96 *may issue an oral emergency protective order. An oral emergency protective order issued pursuant to*
97 *this section shall be reduced to writing, by the law-enforcement officer requesting the order or by the*
98 *magistrate, on a preprinted form approved and provided by the Supreme Court of Virginia. The*
99 *completed form shall include a statement of the grounds for the order asserted by the officer or the*
100 *allegedly abused person.*

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102 the agency shall enter the name of the person subject to the order and other appropriate information
103 required by the Department of State Police into the Virginia crime information network system
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106 respondent as soon as possible, and upon service, the agency making service shall enter the date and
107 time of service, into the Virginia crime information network system. One copy of the order shall be
108 given to the allegedly abused person when it is issued, and one copy shall be filed with the written
109 report required by § 19.2-81.3 C. The original copy shall be forwarded for verification to the judge or
110 magistrate who issued the order and then filed with the clerk of the family court within five business
111 days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or
112 modification order shall also be attested, forwarded and entered in the system as described above. Upon
113 request, the clerk shall provide the allegedly abused person with information regarding the date and time
114 of service.

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

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124 sheriff's office.