

VIRGINIA ACTS OF ASSEMBLY -- 1999 SESSION

CHAPTER 807

An Act to amend and reenact §§ 16.1-253.4, 18.2-57.2 and 19.2-81.3 of the Code of Virginia, relating to assault and battery; protective orders.

[S 1069]

Approved March 29, 1999

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.4, 18.2-57.2 and 19.2-81.3 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-253.4. Emergency protective orders authorized in certain cases; penalty.

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, *except if the respondent is a minor, an emergency protective order shall not be required*, 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 seventy-two hours after issuance. 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 juvenile and domestic relations district court 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 and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant to § 16.1-253.1 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 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 criminal 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 verified by 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.

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 (i) 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.

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

§ 18.2-57.2. 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 this section is issued, the magistrate shall issue an emergency protective order as authorized by § 16.1-253.4, *except if the defendant is a minor, an emergency protective order shall not be required.*

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 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 § 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, *except if the person arrested is a minor, a petition for an emergency protective order shall not be required.* 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, *except if the suspected abuser is a minor, a petition for an emergency protective order shall not be required.*

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 § 15.2-1731. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.