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HOUSE BILL NO. 1874

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 7, 1999)

(Patron Prior to Substitute—Delegate Watts)

A BILL to amend and reenact §§ 19.2-152.-8, 19.2-152.9 and 19.2-152.10 of the Code of Virginia, relating to protective orders in cases of stalking.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-152.-8, 19.2-152.9 and 19.2-152.10 of the Code of Virginia are amended and reenacted as follows:

§ 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 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 allegedly stalked person or 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 *of any kind* by the respondent.

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 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 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 stalked person. The original copy shall be verified by the judge or magistrate who issued the order and then filed with the clerk of the 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

60 employees are compensated officers who are not full-time employees as defined by the employing police
61 department or sheriff's office.

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

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

64 § 19.2-152.9. Preliminary protective orders in cases of stalking.

65 A. Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable
66 period of time, subjected to stalking and (ii) a warrant has been issued for the arrest of the alleged
67 stalker, the court may issue a preliminary protective order against the alleged stalker in order to protect
68 the health and safety of the petitioner or any family or household member of the petitioner. The order
69 may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an
70 affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of stalking
71 or evidence sufficient to establish probable cause that stalking has recently occurred shall constitute
72 good cause.

73 A preliminary protective order may include any one or more of the following conditions to be
74 imposed on the respondent:

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

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

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

80 B. As soon as practicable after receipt of the order by a local law-enforcement agency for service,
81 the agency shall enter the name of the person subject to the order and other appropriate information
82 required by the Department of State Police into the Virginia criminal information network system
83 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where
84 feasible and practical, the court may transfer information electronically to the Virginia criminal
85 information network system. A copy of a preliminary protective order shall be served as soon as
86 possible on the alleged stalker in person as provided in § 16.1-264, and upon service, the agency making
87 service shall enter the date and time of service into the Virginia criminal information network system.
88 The preliminary order shall specify a date for the full hearing. The hearing shall be held within fifteen
89 days of the issuance of the preliminary order. Upon request after the order is issued, the clerk shall
90 provide the petitioner with a copy of the order and information regarding the date and time of service.
91 The order shall further specify that either party may at any time file a motion with the court requesting
92 a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the
93 docket of the court.

94 Upon receipt of the return of service or other proof of service pursuant to subsection C of
95 § 16.1-264, the clerk shall forward forthwith an attested copy of the preliminary protective order to the
96 local police department or sheriff's office which shall, on the date of receipt, enter into the Virginia
97 criminal information network system any other information required by the State Police which was not
98 previously entered. If the order is later dissolved or modified, a copy of the dissolution or modification
99 order shall also be attested, forwarded and entered into the Virginia criminal information network system
100 as described above.

101 C. The preliminary order is effective upon personal service on the alleged stalker. Except as
102 otherwise provided in § 16.1-253.2, a violation of the order shall constitute contempt of court.

103 D. At a full hearing on the petition, the court may issue a protective order pursuant to § 19.2-152.10
104 if the court finds that the petitioner has proven the allegation of stalking by a preponderance of the
105 evidence.

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

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

108 § 19.2-152.10. Protective order in cases of stalking.

109 A. The court may issue a protective order pursuant to this chapter to protect the health and safety of
110 the petitioner and family or household members of a petitioner upon (i) the issuance of a warrant for a
111 violation of § 18.2-60.3, (ii) a hearing held pursuant to subsection D of § 19.2-152.9, or (iii) a
112 conviction for a violation of § 18.2-60.3. A protective order issued under this section may include any
113 one or more of the following conditions to be imposed on the respondent:

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

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

117 3. Any other relief necessary to prevent further acts of stalking, communication or other contact *of*
118 *any kind* by the respondent.

119 B. The protective order may be issued for a specified period; however, unless otherwise authorized
120 by law, a protective order may not be issued under this section for a period longer than two years. A
121 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 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 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.