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HOUSE BILL NO. 1738

Offered January 10, 2007

Prefiled December 22, 2006

A BILL to amend and reenact § 16.1-253.4 of the Code of Virginia, relating to issuance of emergency protective orders contemporaneously with assault warrants; presumption of necessity of protective order.

Patron—Fralin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-253.4 of the Code of Virginia is 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 (i) finds that (i) a warrant for a violation of § 18.2-57.2 has been issued or on that assertion or other evidence issues a warrant for violation of § 18.2-57.2 and finds that there is probable danger of further acts of family abuse against a family or household member by the respondent or (ii) finds that 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.

When the judge or magistrate considers the issuance of an emergency protective order pursuant to clause (i), he shall presume that there is probable danger of further acts of family abuse against a family or household member by the respondent unless the presumption is rebutted by the allegedly abused person.

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. Upon 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. Where practical, the court or magistrate may transfer information electronically to the Virginia Criminal Information Network system. A copy of an emergency protective order issued pursuant to this section shall be served upon

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59 the respondent as soon as possible, and upon service, the agency making service shall enter the date and
60 time of service into the Virginia Criminal Information Network system. One copy of the order shall be
61 given to the allegedly abused person when it is issued, and one copy shall be filed with the written
62 report required by § 19.2-81.3 C. The judge or magistrate who issues an oral order pursuant to an
63 electronic request by a law-enforcement officer shall verify the written order to determine whether the
64 officer who reduced it to writing accurately transcribed the contents of the oral order. The original copy
65 shall be filed with the clerk of the juvenile and domestic relations district court within five business
66 days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or
67 modification order shall be forwarded and entered in the system as described above. Upon request, the
68 clerk shall provide the allegedly abused person with information regarding the date and time of service.

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

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

73 H. As used in this section, a "law-enforcement officer" means any (i) full-time or part-time employee
74 of a police department or sheriff's office which is part of or administered by the Commonwealth or any
75 political subdivision thereof and who is responsible for the prevention and detection of crime and the
76 enforcement of the penal, traffic or highway laws of the Commonwealth and (ii) member of an auxiliary
77 police force established pursuant to subsection B of § 15.2-1731. Part-time employees are compensated
78 officers who are not full-time employees as defined by the employing police department or sheriff's
79 office.

80 I. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's
81 office, nor any employee of them, may disclose, except among themselves, the residential address,
82 telephone number, or place of employment of the person protected by the order or that of the family of
83 such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme
84 Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

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

86 K. No fee shall be charged for filing or serving any petition or order pursuant to this section.