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**HOUSE BILL NO. 2576**

Offered January 10, 2007

Prefiled January 10, 2007

*A BILL to amend and reenact §§ 16.1-253, 16.1-253.1, and 20-103 of the Code of Virginia, relating to extending preliminary protective orders.*

\_\_\_\_\_  
Patron—Shannon

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-253, 16.1-253.1, and 20-103 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-253. Preliminary protective order.

A. Upon the motion of any person or upon the court's own motion, the court may issue a preliminary protective order, after a hearing, if necessary to protect a child's life, health, safety or normal development pending the final determination of any matter before the court. The order may require a child's parents, guardian, legal custodian, other person standing in loco parentis or other family or household member of the child to observe reasonable conditions of behavior for a specified length of time. These conditions shall include any one or more of the following:

1. To abstain from offensive conduct against the child, a family or household member of the child or any person to whom custody of the child is awarded;

2. To cooperate in the provision of reasonable services or programs designed to protect the child's life, health or normal development;

3. To allow persons named by the court to come into the child's home at reasonable times designated by the court to visit the child or inspect the fitness of the home and to determine the physical or emotional health of the child;

4. To allow visitation with the child by persons entitled thereto, as determined by the court;

5. To refrain from acts of commission or omission which tend to endanger the child's life, health or normal development; or

6. To refrain from such contact with the child or family or household members of the child, as the court may deem appropriate, including removal of such person from the residence of the child. However, prior to the issuance by the court of an order removing such person from the residence of the child, the petitioner must prove by a preponderance of the evidence that such person's probable future conduct would constitute a danger to the life or health of such child, and that there are no less drastic alternatives which could reasonably and adequately protect the child's life or health pending a final determination on the petition.

B. A preliminary protective order may be issued ex parte upon motion of any person or the court's own motion in any matter before the court, or upon petition. The motion or petition shall be supported by an affidavit or by sworn testimony in person before the judge or intake officer which establishes that the child would be subjected to an imminent threat to life or health to the extent that delay for the provision of an adversary hearing would be likely to result in serious or irreparable injury to the child's life or health. If an ex parte order is issued without an affidavit being presented, the court, in its order, shall state the basis upon which the order was entered, including a summary of the allegations made and the court's findings. Following the issuance of an ex parte order the court shall provide an adversary hearing to the affected parties within the shortest practicable time not to exceed five business days after the issuance of the order. *If the person subject to the protective order fails to appear at the hearing, the court may, for good cause shown, extend the order until such time that a hearing can be conducted, without requiring additional sworn testimony or affidavits to support the extension.*

C. Prior to the hearing required by this section, notice of the hearing shall be given at least twenty-four hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian, or other person standing in loco parentis of the child, to any other family or household member of the child to whom the protective order may be directed and to the child if he or she is twelve years of age or older. The notice provided herein shall include (i) the time, date and place for the hearing and (ii) a specific statement of the factual circumstances which allegedly necessitate the issuance of a preliminary protective order.

D. All parties to the hearing shall be informed of their right to counsel pursuant to § 16.1-266.

E. At the hearing the child, his or her parents, guardian, legal custodian or other person standing in loco parentis and any other family or household member of the child to whom notice was given shall

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59 have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence  
60 on their own behalf.

61 F. If a petition alleging abuse or neglect of a child has been filed, at the hearing pursuant to this  
62 section the court shall determine whether the allegations of abuse or neglect have been proven by a  
63 preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order.  
64 However, if, before such a finding is made, a person responsible for the care and custody of the child,  
65 the child's guardian ad litem or the local department of social services objects to a finding being made  
66 at the hearing, the court shall schedule an adjudicatory hearing to be held within ~~thirty~~ 30 days of the  
67 date of the initial preliminary protective order hearing. The adjudicatory hearing shall be held to  
68 determine whether the allegations of abuse and neglect have been proven by a preponderance of the  
69 evidence. Parties who are present at the hearing shall be given notice of the date set for the adjudicatory  
70 hearing and parties who are not present shall be summoned as provided in § 16.1-263. The adjudicatory  
71 hearing shall be held and an order may be entered, although a party to the hearing fails to appear and is  
72 not represented by counsel, provided personal or substituted service was made on the person, or the  
73 court determines that such person cannot be found, after reasonable effort, or in the case of a person  
74 who is without the Commonwealth, the person cannot be found or his post office address cannot be  
75 ascertained after reasonable effort.

76 Any preliminary protective order issued shall remain in full force and effect pending the adjudicatory  
77 hearing.

78 G. If at the preliminary protective order hearing held pursuant to this section the court makes a  
79 finding of abuse or neglect and a preliminary protective order is issued, a dispositional hearing shall be  
80 held pursuant to § 16.1-278.2. Upon 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 established  
83 and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical,  
84 the court may transfer information electronically to the Virginia Criminal Information Network. A copy  
85 of the preliminary protective order shall be served as soon as possible on the allegedly abusing person in  
86 person as provided in § 16.1-264, and upon service, the agency making service shall enter the date and  
87 time of service into the Virginia Criminal Information Network. The preliminary order shall specify a  
88 date for the dispositional hearing. The dispositional hearing shall be scheduled at the time of the hearing  
89 pursuant to this section, and shall be held within ~~seventy-five~~ 75 days of this hearing. If an adjudicatory  
90 hearing is requested pursuant to subsection F, the dispositional hearing shall nonetheless be scheduled at  
91 the hearing pursuant to this section. All parties present at the hearing shall be given notice of the date  
92 and time scheduled for the dispositional hearing; parties who are not present shall be summoned to  
93 appear as provided in § 16.1-263.

94 H. Nothing in this section enables the court to remove a child from the custody of his or her parents,  
95 guardian, legal custodian or other person standing in loco parentis, except as provided in § 16.1-278.2,  
96 and no order hereunder shall be entered against a person over whom the court does not have  
97 jurisdiction.

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

103 J. Violation of any order issued pursuant to this section shall constitute contempt of court.

104 K. Upon receipt of the order by a local law-enforcement agency for service, the agency shall enter  
105 the name of the person subject to the order and other appropriate information required by the  
106 Department of State Police into the Virginia Criminal Information Network established and maintained  
107 by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where feasible and practical, the  
108 court may transfer information electronically to the Virginia Criminal Information Network. A copy of  
109 the preliminary protective order shall be served as soon as possible on the allegedly abusing person as  
110 provided in § 16.1-264, and upon service, the agency making service shall enter the date and time of  
111 service into the Virginia Criminal Information Network. The preliminary order shall specify a date for  
112 the full hearing.

113 Upon receipt of the return of service or other proof of service pursuant to subsection C of  
114 § 16.1-264, the clerk shall forward forthwith an attested copy of the preliminary protective order to the  
115 local police department or sheriff's office which shall, upon receipt, enter into the Virginia Criminal  
116 Information Network any other information required by the State Police that was not previously entered.  
117 If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be  
118 attested, forwarded and entered in the Virginia Criminal Information Network as described above.

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

120 § 16.1-253.1. Preliminary protective orders in cases of family abuse; confidentiality.

A. Upon the filing of a petition alleging that the petitioner is or has been, within a reasonable period of time, subjected to family abuse, the court may issue a preliminary protective order against an allegedly abusing person 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 family abuse or evidence sufficient to establish probable cause that family abuse 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 allegedly abusing person:

1. Prohibiting acts of family abuse.
2. Prohibiting such other contacts between the parties as the court deems appropriate.
3. Prohibiting such other contacts with the allegedly abused family or household member as the court deems necessary to protect the safety of such persons.
4. Granting the petitioner possession of the premises occupied by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession shall affect title to any real or personal property.
5. Enjoining the respondent from terminating any necessary utility service to a premises that the petitioner has been granted possession of pursuant to subdivision 4 or, where appropriate, ordering the respondent to restore utility services to such premises.
6. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner alone or jointly owned by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession or use shall affect title to the vehicle.
7. Requiring that the allegedly abusing person provide suitable alternative housing for the petitioner and any other family or household member and, where appropriate, requiring the respondent to pay deposits to connect or restore necessary utility services in the alternative housing provided.
8. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner.

B. 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 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 allegedly abusing person 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 Criminal Information Network system. The preliminary order shall specify a date for the full hearing. The hearing shall be held within ~~fifteen~~ 15 days of the issuance of the preliminary order. *If the respondent fails to appear at this hearing, the court may, for good cause shown, extend the protective order until such time that a hearing can be conducted, without requiring additional sworn testimony or affidavits to support the extension.* However, upon motion of the respondent and for good cause shown, the court may continue the hearing. The preliminary order shall remain in effect until the hearing. 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 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, upon receipt, enter into the Virginia 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 in the Virginia Criminal Information Network system as described above.

C. The preliminary order is effective upon personal service on the allegedly abusing person. 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 § 16.1-279.1 if the court finds that the petitioner has proven the allegation of family abuse by a preponderance of the evidence.

E. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme

182 Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

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

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

185 § 20-103. Court may make orders pending suit for divorce, custody or visitation, etc.

186 A. In suits for divorce, annulment and separate maintenance, and in proceedings arising under  
187 subdivision A 3 or subsection L of § 16.1-241, the court having jurisdiction of the matter may, at any  
188 time pending a suit pursuant to this chapter, in the discretion of such court, make any order that may be  
189 proper (i) to compel a spouse to pay any sums necessary for the maintenance and support of the  
190 petitioning spouse, including an order that the other spouse provide health care coverage for the  
191 petitioning spouse, unless it is shown that such coverage cannot be obtained, (ii) to enable such spouse  
192 to carry on the suit, (iii) to prevent either spouse from imposing any restraint on the personal liberty of  
193 the other spouse, (iv) to provide for the custody and maintenance of the minor children of the parties,  
194 including an order that either party provide health care coverage for the children, (v) to provide support,  
195 calculated in accordance with § 20-108.2, for any child of the parties to whom a duty of support is  
196 owed and to continue to support any child over the age of 18 who meets the requirements set forth in  
197 subsection C of § 20-124.2, (vi) for the exclusive use and possession of the family residence during the  
198 pendency of the suit, (vii) to preserve the estate of either spouse, so that it be forthcoming to meet any  
199 decree which may be made in the suit, or (viii) to compel either spouse to give security to abide such  
200 decree. The parties to any petition where a child whose custody, visitation, or support is contested shall  
201 show proof that they have attended within the 12 months prior to their court appearance or that they  
202 shall attend within 45 days thereafter an educational seminar or other like program conducted by a  
203 qualified person or organization approved by the court except that the court may require the parties to  
204 attend such seminar or program in uncontested cases only if the court finds good cause. The seminar or  
205 other program shall be a minimum of four hours in length and shall address the effects of separation or  
206 divorce on children, parenting responsibilities, options for conflict resolution and financial  
207 responsibilities. Once a party has completed one educational seminar or other like program, the required  
208 completion of additional programs shall be at the court's discretion. Parties under this section shall  
209 include natural or adoptive parents of the child, or any person with a legitimate interest as defined in  
210 § 20-124.1. The fee charged a party for participation in such program shall be based on the party's  
211 ability to pay; however, no fee in excess of \$50 may be charged. Whenever possible, before  
212 participating in mediation or alternative dispute resolution to address custody, visitation or support, each  
213 party shall have attended the educational seminar or other like program. The court may grant an  
214 exemption from attendance of such program for good cause shown or if there is no program reasonably  
215 available. Other than statements or admissions by a party admitting criminal activity or child abuse, no  
216 statement or admission by a party in such seminar or program shall be admissible into evidence in any  
217 subsequent proceeding.

218 B. In addition to the terms provided in subsection A, upon a showing by a party of reasonable  
219 apprehension of physical harm to that party by such party's family or household member as that term is  
220 defined in § 16.1-228, and consistent with rules of the Supreme Court of Virginia, the court may enter  
221 an order excluding that party's family or household member from the jointly owned or jointly rented  
222 family dwelling. In any case where an order is entered under this paragraph, pursuant to an ex parte  
223 hearing, the order shall not exclude a family or household member from the family dwelling for a  
224 period in excess of 15 days from the date the order is served, in person, upon the person so excluded.  
225 The order may provide for an extension of time beyond the 15 days, to become effective automatically.  
226 The person served may at any time file a written motion in the clerk's office requesting a hearing to  
227 dissolve or modify the order. Nothing in this section shall be construed to prohibit the court from  
228 extending an order entered under this subsection for such longer period of time as is deemed  
229 appropriate, after a hearing on notice to the parties. *If the party subject to the order fails to appear at*  
230 *this hearing, the court may, for good cause shown, extend the order until such time that a hearing can*  
231 *be conducted, without requiring additional sworn testimony or affidavits to support the extension.*

232 C. In cases other than those for divorce in which a custody or visitation arrangement for a minor  
233 child is sought, the court may enter an order providing for custody, visitation or maintenance pending  
234 the suit as provided in subsection A. The order shall be directed to either parent or any person with a  
235 legitimate interest who is a party to the suit.

236 D. Orders entered pursuant to this section which provide for custody or visitation arrangements  
237 pending the suit shall be made in accordance with the standards set out in Chapter 6.1 (§ 20-124.1 et  
238 seq.) of this title. Orders entered pursuant to subsection B shall be certified by the clerk and forwarded  
239 as soon as possible to the local police department or sheriff's office which shall, on the date of receipt,  
240 enter the name of the person subject to the order and other appropriate information required by the  
241 Department of State Police into the Virginia crime information network system established and  
242 maintained by the Department of State Police pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. If the  
243 order is later dissolved or modified, a copy of the dissolution or modification shall also be certified,

244 forwarded and entered in the system as described above.

245 E. An order entered pursuant to this section shall have no presumptive effect and shall not be  
246 determinative when adjudicating the underlying cause.

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