

# VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

## CHAPTER 637

*An Act to amend and reenact §§ 16.1-241, 16.1-253.2, 16.1-253.4, 16.1-260, and 19.2-152.8 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 9.1 of Title 19.2 a section numbered 19.2-152.11, relating to protective orders; juveniles; venue.*

[S 300]

Approved April 5, 2012

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

**1. That §§ 16.1-241, 16.1-253.2, 16.1-253.4, 16.1-260, and 19.2-152.8 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 9.1 of Title 19.2 a section numbered 19.2-152.11 as follows:**

§ 16.1-241. Jurisdiction; consent for abortion.

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county, over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except as provided in § 16.1-244;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § 16.1-244; and

6. Who is charged with a traffic infraction as defined in § 46.2-100.

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate

interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives from or through a person whose parental rights have been terminated by court order, either voluntarily or involuntarily, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted, except where a final order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was conceived as a result of such violation. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) ~~of this chapter~~ and the involuntary admission of a person with mental illness or judicial certification of eligibility for admission to a training center for persons with mental retardation in accordance with the provisions of Chapters 1 (§ 37.2-100 et seq.) and 8 (§ 37.2-800 et seq.) of Title 37.2. Jurisdiction of the involuntary admission and certification of adults shall be concurrent with the general district court.

C. Except as provided in subsections D and H hereof, judicial consent to such activities as may require parental consent may be given for a child who has been separated from his parents, guardian, legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

D. Judicial consent for emergency surgical or medical treatment for a child who is neither married nor has ever been married, when the consent of his parent, guardian, legal custodian or other person standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person standing in loco parentis (i) is not a resident of the Commonwealth, (ii) has his whereabouts unknown, (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such consent or provide such treatment when requested by the judge to do so.

E. Any person charged with deserting, abandoning or failing to provide support for any person in violation of law.

F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

1. Who has been abused or neglected;
2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or is otherwise before the court pursuant to subdivision A 4 ~~of this section~~; or
3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court finds that such person has by overt act or omission induced, caused, encouraged or contributed to the conduct of the child complained of in the petition.

G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services that are required by law to be provided for that child or such child's parent, guardian, legal custodian or other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

H. Judicial consent to apply for a work permit for a child when such child is separated from his parents, legal guardian or other person standing in loco parentis.

I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or neglect of children or with any violation of law that causes or tends to cause a child to come within the purview of this law, or with any other offense against the person of a child. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause.

J. All offenses in which one family or household member is charged with an offense in which another family or household member is the victim and all offenses under § 18.2-49.1.

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. Any objection based on jurisdiction under this subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial, before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse. A decision under this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court.

A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1, *and all petitions filed for the purpose of obtaining an order of protection pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 if either the alleged victim or the respondent is a juvenile.*

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) ~~of this chapter.~~

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20. A circuit court shall have concurrent original jurisdiction to the extent provided for in § 20-49.2.

R. ~~Petitions for the purpose of obtaining an emergency protective order pursuant to § 16.1-253.4.~~  
[Repealed.]

S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

T. Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.2-1526.

U. Petitions filed in connection with parental placement adoption consent hearings pursuant to § 63.2-1233. Such proceedings shall be advanced on the docket so as to be heard by the court within 10 days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

V. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion if a minor elects not to seek consent of an authorized person.

After a hearing, a judge shall issue an order authorizing a physician to perform an abortion, without the consent of any authorized person, if he finds that (i) the minor is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independent of the wishes of any authorized person, or (ii) the minor is not mature enough or well enough informed to make such decision, but the desired abortion would be in her best interest.

If the judge authorizes an abortion based on the best interests of the minor, such order shall expressly state that such authorization is subject to the physician or his agent giving notice of intent to perform the abortion; however, no such notice shall be required if the judge finds that such notice would not be in the best interest of the minor. In determining whether notice is in the best interest of the minor, the judge shall consider the totality of the circumstances; however, he shall find that notice is not in the best interest of the minor if he finds that (i) one or more authorized persons with whom the minor regularly and customarily resides is abusive or neglectful, and (ii) every other authorized person, if any, is either abusive or neglectful or has refused to accept responsibility as parent, legal guardian, custodian or person standing in loco parentis.

The minor may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and shall, upon her request, appoint counsel for her.

Notwithstanding any other provision of law, the provisions of this subsection shall govern proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and records of such proceedings shall be confidential. Such proceedings shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay in order to serve the best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon as practicable but in no event later than four days after the petition is filed.

An expedited confidential appeal to the circuit court shall be available to any minor for whom the court denies an order authorizing an abortion without consent or without notice. Any such appeal shall be heard and decided no later than five days after the appeal is filed. The time periods required by this subsection shall be subject to subsection B of § 1-210. An order authorizing an abortion without consent or without notice shall not be subject to appeal.

No filing fees shall be required of the minor at trial or upon appeal.

If either the original court or the circuit court fails to act within the time periods required by this subsection, the court before which the proceeding is pending shall immediately authorize a physician to perform the abortion without consent of or notice to an authorized person.

Nothing contained in this subsection shall be construed to authorize a physician to perform an abortion on a minor in circumstances or in a manner that would be unlawful if performed on an adult woman.

A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent has been obtained or the minor delivers to the physician a court order entered pursuant to this section

and the physician or his agent provides such notice as such order may require. However, neither consent nor judicial authorization nor notice shall be required if the minor declares that she is abused or neglected and the attending physician has reason to suspect that the minor may be an abused or neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the facts justifying the exception in the minor's medical record.

For purposes of this subsection:

"Authorization" means the minor has delivered to the physician a notarized, written statement signed by an authorized person that the authorized person knows of the minor's intent to have an abortion and consents to such abortion being performed on the minor.

"Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with whom the minor regularly and customarily resides and who has care and control of the minor. Any person who knows he is not an authorized person and who knowingly and willfully signs an authorization statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

"Consent" means that (i) the physician has given notice of intent to perform the abortion and has received authorization from an authorized person, or (ii) at least one authorized person is present with the minor seeking the abortion and provides written authorization to the physician, which shall be witnessed by the physician or an agent thereof. In either case, the written authorization shall be incorporated into the minor's medical record and maintained as a part thereof.

"Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.

"Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual notice of his intention to perform such abortion to an authorized person, either in person or by telephone, at least 24 hours previous to the performance of the abortion; or (ii) the physician or his agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at least 72 hours prior to the performance of the abortion.

"Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical procedure or to induce a miscarriage as provided in § 18.2-72, 18.2-73, or 18.2-74.

"Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any of the Armed Forces of the United States; (iii) willingly living separate and apart from his or her parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

W. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) of this chapter relating to standby guardians for minor children.

The ages specified in this law refer to the age of the child at the time of the acts complained of in the petition.

Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of any process in a proceeding pursuant to subdivision A 3 of subsection A, except as provided in subdivision A 6 of § 17.1-272, or subsection B, D, M or R of this section.

Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of subsection V shall be guilty of a Class 3 misdemeanor.

§ 16.1-253.2. Violation of provisions of protective orders; penalty.

In addition to any other penalty provided by law, any person who violates any provision of a protective order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.14, or 16.1-279.1 or subsection B of § 20-103, ~~which~~ *when such violation involves a provision of the protective order that prohibits such person from (i) going or remaining upon land, buildings, or premises or from; (ii) further acts of family abuse; or (iii) committing a criminal offense, or which prohibits contacts between by the respondent and with the respondent's allegedly abused person or family or household member members of the allegedly abused person as the court deems appropriate, is guilty of a Class 1 misdemeanor.* The punishment for any person convicted of a second offense of violating a protective order, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, shall include a mandatory minimum term of confinement of 60 days. Any person convicted of a third or subsequent offense of violating a protective order, when the offense is committed within 20 years of the first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence is guilty of a Class 6 felony and the punishment shall include a mandatory minimum term of confinement of six months.

If the respondent commits an assault and battery upon any party protected by the protective order, resulting in serious bodily injury to the party, he is guilty of a Class 6 felony. Any person who violates such a protective order by furtively entering the home of any protected party while the party is present,

or by entering and remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty provided by law.

Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § 16.1-279.1 for a specified period not exceeding two years from the date of conviction.

§ 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 a warrant for a violation of § 18.2-57.2 has been issued or 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 or criminal offenses that result in injury to person or property;
2. Prohibiting such contacts by the respondent with *the allegedly abused person* or family or household members of the ~~respondent~~ *allegedly abused person* 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 at 11:59 p.m. on the third day following issuance. If the expiration occurs on a day that the court is not in session, the emergency protective order shall be extended until 11:59 p.m. on the next day that the juvenile and domestic relations district court is in session. When issuing an emergency protective order under this section, the judge or magistrate shall provide the protected person or the law-enforcement officer seeking the emergency protective order with the form for use in filing petitions pursuant to § 16.1-253.1 and written information regarding protective orders that shall include the telephone numbers of domestic violence agencies and legal referral sources on a form prepared by the Supreme Court. If these forms are provided to a law-enforcement officer, the officer may provide these forms to the protected person when giving the emergency protective order to the protected person. The respondent may at any time file a motion with the court requesting a hearing to dissolve or modify the order issued hereunder. 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 three days 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. The court or magistrate shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court or magistrate. A copy of an emergency protective order issued pursuant to this section containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be

served forthwith upon the respondent and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement 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 Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the respondent. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. 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 subsection D of § 19.2-81.3. The judge or magistrate who issues an oral order pursuant to an electronic request by a law-enforcement officer shall verify the written order to determine whether the officer who reduced it to writing accurately transcribed the contents of the oral order. The original copy shall be 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 forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court. 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. 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 Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

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

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

§ 16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection H of this section and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk, (ii) designated nonattorney employees of the Department of Social Services may complete, sign and file petitions and motions relating to the establishment, modification, or enforcement of support on forms approved by the Supreme Court of Virginia with the clerk, and (iii) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services, in need of supervision or delinquent. Complaints alleging abuse or neglect of a child shall be referred initially to the local department of social services in accordance with the provisions of Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is receiving child support services or public assistance. No individual who is receiving support services or public assistance shall be denied the right to file a petition or motion to establish, modify or enforce an order for support of a child. If the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together with notice of the court date, to the Division of Child Support Enforcement.

B. The appearance of a child before an intake officer may be by (i) personal appearance before the

intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, an intake officer may exercise all powers conferred by law. All communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

When the court service unit of any court receives a complaint alleging facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake officer, may proceed informally to make such adjustment as is practicable without the filing of a petition or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to establish probable cause for the issuance of the petition.

An intake officer may proceed informally on a complaint alleging a child is in need of services, in need of supervision or delinquent only if the juvenile (i) is not alleged to have committed a violent juvenile felony or (ii) has not previously been proceeded against informally or adjudicated delinquent for an offense that would be a felony if committed by an adult. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is delinquent for an offense that would be a felony if committed by an adult shall be filed with the court if the juvenile had previously been proceeded against informally by intake or had been adjudicated delinquent for an offense that would be a felony if committed by an adult.

If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and the attendance officer has provided documentation to the intake officer that the relevant school division has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the court. The intake officer may defer filing the complaint for 90 days and proceed informally by developing a truancy plan. The intake officer may proceed informally only if the juvenile has not previously been proceeded against informally or adjudicated in need of supervision for failure to comply with compulsory school attendance as provided in § 22.1-254. The juvenile and his parent or parents, guardian or other person standing in loco parentis must agree, in writing, for the development of a truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents, guardian or other person standing in loco parentis participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as necessary to ensure the juvenile's compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an interagency interdisciplinary team approach. The team may include qualified personnel who are reasonably available from the appropriate department of social services, community services board, local school division, court service unit and other appropriate and available public and private agencies and may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, then the intake officer shall file the petition.

Whenever informal action is taken as provided in this subsection on a complaint alleging that a child is in need of services, in need of supervision or delinquent, the intake officer shall (i) develop a plan for the juvenile, which may include restitution and the performance of community service, based upon community resources and the circumstances which resulted in the complaint, (ii) create an official record of the action taken by the intake officer and file such record in the juvenile's case file, and (iii) advise the juvenile and the juvenile's parent, guardian or other person standing in loco parentis and the complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241 will result in the filing of a petition with the court.

C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody, visitation or support of a child is the subject of controversy or requires determination, (ii) a person has deserted, abandoned or failed to provide support for any person in violation of law, (iii) a child or such child's parent, guardian, legal custodian or other person standing in loco parentis is entitled to treatment, rehabilitation or other services which are required by law, ~~or~~ (iv) family abuse has occurred and a protective order is being sought pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1, *or (v) an act of violence, force, or threat has occurred, a protective order is being sought pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, and either the alleged victim or the respondent is a juvenile.* If any such complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to be abused, neglected, in need of services, in need of supervision or delinquent, if the intake officer believes that probable cause does not exist, or that the authorization of a petition will not be in the best interest of the family or juvenile or that the matter may be effectively dealt with by some agency other than the court, he may refuse to authorize the filing of a petition. The intake officer shall provide to a person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written explanation of the conditions, procedures and time limits applicable to the issuance of protective orders

pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. *If the person is seeking a protective order pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer shall provide a written explanation of the conditions, procedures, and time limits applicable to the issuance of protective orders pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10.*

D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be in need of supervision have utilized or attempted to utilize treatment and services available in the community and have exhausted all appropriate nonjudicial remedies which are available to them. When the intake officer determines that the parties have not attempted to utilize available treatment or services or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility or individual to receive treatment or services, and a petition shall not be filed. Only after the intake officer determines that the parties have made a reasonable effort to utilize available community treatment or services may he permit the petition to be filed.

E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a status offense, or a misdemeanor other than Class 1, his decision is final.

Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 2 of § 16.1-256, the intake officer shall accept and file a petition founded upon the warrant.

F. The intake officer shall notify the attorney for the Commonwealth of the filing of any petition which alleges facts of an offense which would be a felony if committed by an adult.

G. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter, the intake officer shall file a report with the division superintendent of the school division in which any student who is the subject of a petition alleging that such student who is a juvenile has committed an act, wherever committed, which would be a crime if committed by an adult, or that such student who is an adult has committed a crime and is alleged to be within the jurisdiction of the court. The report shall notify the division superintendent of the filing of the petition and the nature of the offense, if the violation involves:

1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 et seq.), or 7 (§ 18.2-308 et seq.) of Chapter 7 of Title 18.2;
2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;
4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;
5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;
6. Manufacture, sale or distribution of marijuana or synthetic cannabinoids pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;
7. Arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;
8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93;
9. Robbery pursuant to § 18.2-58;
10. Prohibited criminal street gang activity pursuant to § 18.2-46.2;
11. Recruitment of other juveniles for a criminal street gang activity pursuant to § 18.2-46.3; or
12. An act of violence by a mob pursuant to § 18.2-42.1.

The failure to provide information regarding the school in which the student who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

The information provided to a division superintendent pursuant to this section may be disclosed only as provided in § 16.1-305.2.

H. The filing of a petition shall not be necessary:

1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and other pedestrian offenses, game and fish laws or a violation of the ordinance of any city regulating surfing or any ordinance establishing curfew violations, animal control violations or littering violations. In such cases the court may proceed on a summons issued by the officer investigating the violation in the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle accident may, at the scene of the accident or at any other location where a juvenile who is involved in such an accident may be located, proceed on a summons in lieu of filing a petition.

2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subsection H



of § 16.1-241.

3. In the case of a misdemeanor violation of § 18.2-250.1, 18.2-266, 18.2-266.1, or 29.1-738, or the commission of any other alcohol-related offense, provided the juvenile is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the manner provided in § 16.1-278.8, 16.1-278.8:01, or 16.1-278.9. If the juvenile so charged with a violation of § 18.2-51.4, 18.2-266, 18.2-266.1, 18.2-272, or 29.1-738 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or 29.1-738.2, the provisions of these sections shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be served on a parent or legal guardian and the juvenile, and a copy of the summons shall be forwarded to the court in which the violation is to be tried. When a violation of § 18.2-250.1 is charged by summons, the juvenile shall be entitled to have the charge referred to intake for consideration of informal proceedings pursuant to subsection B, provided such right is exercised by written notification to the clerk not later than 10 days prior to trial. At the time such summons alleging a violation of § 18.2-250.1 is served, the officer shall also serve upon the juvenile written notice of the right to have the charge referred to intake on a form approved by the Supreme Court and make return of such service to the court. If the officer fails to make such service or return, the court shall dismiss the summons without prejudice.

4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as provided by law for adults provided that notice of the summons to appear is mailed by the investigating officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

I. Failure to comply with the procedures set forth in this section shall not divest the juvenile court of the jurisdiction granted it in § 16.1-241.

§ 19.2-152.8. Emergency protective orders authorized.

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 alleged victim asserts under oath to a judge or magistrate that such person is being or has been subjected to an act of violence, force, or threat and on that assertion or other evidence the judge or magistrate finds that (i) there is probable danger of a further such act being committed by the respondent against the alleged victim or (ii) a petition or warrant for the arrest of the respondent has been issued for any criminal offense resulting from the commission of an act of violence, force, or threat, 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 violence, force, or threat or criminal offenses resulting in injury to person or property;

2. Prohibiting such contacts by the respondent with the alleged victim or ~~such person's~~ *the alleged victim'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 (i) acts of violence, force, or threat, (ii) criminal offenses resulting in injury to person or property, or (iii) communication or other contact of any kind by the respondent.

C. An emergency protective order issued pursuant to this section shall expire at 11:59 p.m. on the third day following issuance. If the expiration occurs on a day that the court is not in session, the emergency protective order shall be extended until 11:59 p.m. on the next 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 and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant to § 19.2-152.9 or 19.2-152.10, may request the extension of an emergency protective order for an additional period of time not to exceed three days 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 alleged victim of such crime.

E. The court or magistrate shall forthwith, but in all cases no later than the end of the business day

on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court or magistrate. A copy of an emergency protective order issued pursuant to this section containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement 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 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent. Upon service, the agency making service shall enter the date and time of service and other appropriate information required into the Virginia Criminal Information Network and make due return to the court. One copy of the order shall be given to the alleged victim of such crime. The judge or magistrate who issues an oral order pursuant to an electronic request by a law-enforcement officer shall verify the written order to determine whether the officer who reduced it to writing accurately transcribed the contents of the oral order. The original copy shall be 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 forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court. Upon request, the clerk shall provide the alleged victim of such crime 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 employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

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

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

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

§ 19.2-152.11. Venue for protective orders.

*Proceedings in which a protective order is sought pursuant to this chapter shall be commenced where (i) either party has his principal residence; (ii) the act of violence, force, or threat by the respondent against the petitioner occurred; or (iii) a protective order was issued if, at the time the proceeding is commenced, the order is in effect to protect the petitioner or a family or household member of the petitioner.*