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## HOUSE BILL NO. 285

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on February 7, 2014)

(Patron Prior to Substitute—Delegate Bell, Robert B.)

*A BILL to amend and reenact §§ 16.1-253.4, 19.2-18, and 19.2-81.3 of the Code of Virginia, relating to arrest for domestic assault; emergency protective orders; definition of law-enforcement officer.*

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

**1. That §§ 16.1-253.4, 19.2-18, and 19.2-81.3 of the Code of Virginia are amended and reenacted as follows:**

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

A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person.

B. When a law-enforcement officer or an allegedly abused person asserts under oath to a judge or magistrate, and on that assertion or other evidence the judge or magistrate (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 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

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60 Network the respondent's identifying information and the name, date of birth, sex, and race of each  
61 protected person provided to the court or magistrate. A copy of an emergency protective order issued  
62 pursuant to this section containing any such identifying information shall be forwarded forthwith to the  
63 primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of  
64 the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any  
65 modification as necessary to the identifying information and other appropriate information required by  
66 the Department of State Police into the Virginia Criminal Information Network established and  
67 maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be  
68 served forthwith upon the respondent and due return made to the court. However, if the order is issued  
69 by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order  
70 containing the respondent's identifying information and the name, date of birth, sex, and race of each  
71 protected person provided to the court to the primary law-enforcement agency providing service and  
72 entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter  
73 the name of the person subject to the order and other appropriate information required by the  
74 Department of State Police into the Virginia Criminal Network established and maintained by the  
75 Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith  
76 on the respondent. Upon service, the agency making service shall enter the date and time of service and  
77 other appropriate information required by the Department of State Police into the Virginia Criminal  
78 Information Network and make due return to the court. One copy of the order shall be given to the  
79 allegedly abused person when it is issued, and one copy shall be filed with the written report required  
80 by subsection D of § 19.2-81.3. The judge or magistrate who issues an oral order pursuant to an  
81 electronic request by a law-enforcement officer shall verify the written order to determine whether the  
82 officer who reduced it to writing accurately transcribed the contents of the oral order. The original copy  
83 shall be filed with the clerk of the juvenile and domestic relations district court within five business  
84 days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or  
85 modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency  
86 responsible for service and entry of protective orders, and upon receipt of the order by the primary  
87 law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the  
88 identifying information and other appropriate information required by the Department of State Police  
89 into the Virginia Criminal Information Network as described above and the order shall be served  
90 forthwith and due return made to the court. Upon request, the clerk shall provide the allegedly abused  
91 person with information regarding the date and time of service.

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

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

96 H. As used in this section, a "law-enforcement officer" means ~~any~~ (i) *any* full-time or part-time  
97 employee of a police department or sheriff's office which is part of or administered by the  
98 Commonwealth or any political subdivision thereof and who is responsible for the prevention and  
99 detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth  
100 ~~and~~; (ii) *any* member of an auxiliary police force established pursuant to § 15.2-1731; *and* (iii) *any*  
101 *special conservator of the peace who meets the certification requirements for a law-enforcement officer*  
102 *as set forth in § 15.2-1706*. Part-time employees are compensated officers who are not full-time  
103 employees as defined by the employing police department or sheriff's office.

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

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

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

111 **§ 19.2-18. Powers and duties generally.**

112 Every conservator of the peace shall have authority to arrest without a warrant in such instances as  
113 are set out in §§ 19.2-19 ~~and~~, 19.2-81, *and* 19.2-81.3. Upon making an arrest without a warrant, the  
114 conservator of the peace shall proceed in accordance with the provisions of § 19.2-22 or § 19.2-82 as the  
115 case may be.

116 **§ 19.2-81.3. Arrest without a warrant authorized in cases of assault and battery against a**  
117 **family or household member and stalking and for violations of protective orders; procedure, etc.**

118 A. Any law-enforcement officer with the powers of arrest under subsection A of § 19.2-81 may arrest  
119 without a warrant for an alleged violation of § 18.2-57.2, 18.2-60.4, or 16.1-253.2 regardless of whether  
120 such violation was committed in his presence, if such arrest is based on probable cause or upon personal  
121 observations or the reasonable complaint of a person who observed the alleged offense or upon personal

122 investigation.

123 B. A law-enforcement officer having probable cause to believe that a violation of § 18.2-57.2 or  
124 16.1-253.2 has occurred shall arrest and take into custody the person he has probable cause to believe,  
125 based on the totality of the circumstances, was the predominant physical aggressor unless there are  
126 special circumstances which would dictate a course of action other than an arrest. The standards for  
127 determining who is the predominant physical aggressor shall be based on the following considerations:  
128 (i) who was the first aggressor, (ii) the protection of the health and safety of family and household  
129 members, (iii) prior complaints of family abuse by the allegedly abusing person involving the family or  
130 household members, (iv) the relative severity of the injuries inflicted on persons involved in the  
131 incident, (v) whether any injuries were inflicted in self-defense, (vi) witness statements, and (vii) other  
132 observations.

133 C. A law-enforcement officer having probable cause to believe that a violation of § 18.2-60.4 has  
134 occurred that involves physical aggression shall arrest and take into custody the person he has probable  
135 cause to believe, based on the totality of the circumstances, was the predominant physical aggressor  
136 unless there are special circumstances which would dictate a course of action other than an arrest. The  
137 standards for determining who is the predominant physical aggressor shall be based on the following  
138 considerations: (i) who was the first aggressor, (ii) the protection of the health and safety of the person  
139 to whom the protective order was issued and the person's family and household members, (iii) prior acts  
140 of violence, force, or threat, as defined in § 19.2-152.7:1, by the person against whom the protective  
141 order was issued against the person protected by the order or the protected person's family or household  
142 members, (iv) the relative severity of the injuries inflicted on persons involved in the incident, (v)  
143 whether any injuries were inflicted in self-defense, (vi) witness statements, and (vii) other observations.

144 D. Regardless of whether an arrest is made, the officer shall file a written report with his department,  
145 which shall state whether any arrests were made, and if so, the number of arrests, specifically including  
146 any incident in which he has probable cause to believe family abuse has occurred, and, where required,  
147 including a complete statement in writing that there are special circumstances that would dictate a course  
148 of action other than an arrest. The officer shall provide the allegedly abused person or the person  
149 protected by an order issued pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, both orally and in  
150 writing, information regarding the legal and community resources available to the allegedly abused  
151 person or person protected by the order. Upon request of the allegedly abused person or person  
152 protected by the order, the department shall make a summary of the report available to the allegedly  
153 abused person or person protected by the order.

154 E. In every case in which a law-enforcement officer makes an arrest under this section for a violation  
155 of § 18.2-57.2, he shall petition for an emergency protective order as authorized in § 16.1-253.4 when  
156 the person arrested and taken into custody is brought before the magistrate, except if the person arrested  
157 is a minor, a petition for an emergency protective order shall not be required. Regardless of whether an  
158 arrest is made, if the officer has probable cause to believe that a danger of acts of family abuse exists,  
159 the law-enforcement officer shall seek an emergency protective order under § 16.1-253.4, except if the  
160 suspected abuser is a minor, a petition for an emergency protective order shall not be required.

161 F. A law-enforcement officer investigating any complaint of family abuse, including but not limited  
162 to assault and battery against a family or household member shall, upon request, transport, or arrange  
163 for the transportation of an abused person to a hospital or safe shelter, or to appear before a magistrate.  
164 Any local law-enforcement agency may adopt a policy requiring an officer to transport or arrange for  
165 transportation of an abused person as provided in this subsection.

166 G. The definition of "family or household member" in § 16.1-228 applies to this section.

167 H. As used in this section, a "law-enforcement officer" means (i) any full-time or part-time employee  
168 of a police department or sheriff's office which is part of or administered by the Commonwealth or any  
169 political subdivision thereof, and any campus police officer appointed under Chapter 17 (§ 23-232 et  
170 seq.) of Title 23, and who is responsible for the prevention and detection of crime and the enforcement  
171 of the penal, traffic or highway laws of this Commonwealth ~~and~~; (ii) any member of an auxiliary police  
172 force established pursuant to § 15.2-1731; *and (iii) any special conservator of the peace who meets the*  
173 *certification requirements for a law-enforcement officer as set forth in § 15.2-1706.* Part-time employees  
174 are compensated officers who are not full-time employees as defined by the employing police  
175 department or sheriff's office.