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## SENATE BILL NO. 861

Offered January 11, 2017

Prefiled December 7, 2016

A *BILL to amend and reenact §§ 16.1-253.1 and 19.2-152.9 of the Code of Virginia, relating to preliminary protective orders; contents of orders.*

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Patron—Surovell

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Referred to Committee for Courts of Justice

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

**1. That §§ 16.1-253.1 and 19.2-152.9 of the Code of Virginia are amended and reenacted as follows:**

**§ 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. *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.* Immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred shall constitute good cause. Evidence that the petitioner has been subjected to family abuse within a reasonable time and evidence of immediate and present danger of family abuse may be established by a showing that (i) the allegedly abusing person is incarcerated and is to be released from incarceration within 30 days following the petition or has been released from incarceration within 30 days prior to the petition, (ii) the crime for which the allegedly abusing person was convicted and incarcerated involved family abuse against the petitioner, and (iii) the allegedly abusing person has made threatening contact with the petitioner while he was incarcerated, exhibiting a renewed threat to the petitioner of family abuse.

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 or criminal offenses that result in injury to person or property.
2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons.
3. 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.
4. Enjoining the respondent from terminating any necessary utility service to a premises that the petitioner has been granted possession of pursuant to subdivision 3 or, where appropriate, ordering the respondent to restore utility services to such premises.
5. 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.
6. 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.
7. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such petitioner meets the definition of owner in § 3.2-6500.
8. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner.

B. The court 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. A copy of a preliminary protective order 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

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59 Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et  
60 seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as  
61 provided in § 16.1-264 and due return made to the court. However, if the order is issued by the circuit  
62 court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the  
63 respondent's identifying information and the name, date of birth, sex, and race of each protected person  
64 provided to the court to the primary law-enforcement agency providing service and entry of protective  
65 orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the  
66 person subject to the order and other appropriate information required by the Department of State Police  
67 into the Virginia Criminal Information Network established and maintained by the Department pursuant  
68 to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly  
69 abusing person in person as provided in § 16.1-264. Upon service, the agency making service shall enter  
70 the date and time of service and other appropriate information required by the Department of State  
71 Police into the Virginia Criminal Information Network and make due return to the court. The  
72 preliminary order shall specify a date for the full hearing. The hearing shall be held within 15 days of  
73 the issuance of the preliminary order. If the respondent fails to appear at this hearing because the  
74 respondent was not personally served, or if personally served was incarcerated and not transported to the  
75 hearing, the court may extend the protective order for a period not to exceed six months. The extended  
76 protective order shall be served forthwith on the respondent. However, upon motion of the respondent  
77 and for good cause shown, the court may continue the hearing. The preliminary order shall remain in  
78 effect until the hearing. Upon request after the order is issued, the clerk shall provide the petitioner with  
79 a copy of the order and information regarding the date and time of service. The order shall further  
80 specify that either party may at any time file a motion with the court requesting a hearing to dissolve or  
81 modify the order. The hearing on the motion shall be given precedence on the docket of the court.

82 Upon receipt of the return of service or other proof of service pursuant to subsection C of  
83 § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to the  
84 primary law-enforcement agency, and the agency shall forthwith verify and enter any modification as  
85 necessary into the Virginia Criminal Information Network as described above. If the order is later  
86 dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded  
87 forthwith to the primary law-enforcement agency responsible for service and entry of protective orders,  
88 and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify  
89 and enter any modification as necessary to the identifying information and other appropriate information  
90 required by the Department of State Police into the Virginia Criminal Information Network as described  
91 above and the order shall be served forthwith and due return made to the court.

92 C. The preliminary order is effective upon personal service on the allegedly abusing person. Except  
93 as otherwise provided in § 16.1-253.2, a violation of the order shall constitute contempt of court.

94 D. At a full hearing on the petition, the court may issue a protective order pursuant to § 16.1-279.1 if  
95 the court finds that the petitioner has proven the allegation of family abuse by a preponderance of the  
96 evidence.

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

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

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

104 **§ 19.2-152.9. Preliminary protective orders.**

105 A. Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable  
106 period of time, subjected to an act of violence, force, or threat, or (ii) a petition or warrant has been  
107 issued for the arrest of the alleged perpetrator for any criminal offense resulting from the commission of  
108 an act of violence, force, or threat, the court may issue a preliminary protective order against the alleged  
109 perpetrator in order to protect the health and safety of the petitioner or any family or household member  
110 of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the  
111 petition is supported by an affidavit or sworn testimony before the judge or intake officer. *If an ex parte*  
112 *order is issued without an affidavit being presented, the court, in its order, shall state the basis upon*  
113 *which the order was entered, including a summary of the allegations made and the court's findings.*  
114 Immediate and present danger of any act of violence, force, or threat or evidence sufficient to establish  
115 probable cause that an act of violence, force, or threat has recently occurred shall constitute good cause.

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

- 118 1. Prohibiting acts of violence, force, or threat or criminal offenses that may result in injury to  
119 person or property;
- 120 2. Prohibiting such other contacts by the respondent with the petitioner or the petitioner's family or

household members as the court deems necessary for the health and safety of such persons;

3. Such other conditions as the court deems necessary to prevent (i) acts of violence, force, or threat, (ii) criminal offenses that may result in injury to person or property, or (iii) communication or other contact of any kind by the respondent; and

4. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such petitioner meets the definition of owner in § 3.2-6500.

B. The court 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. A copy of a preliminary protective order 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 on the alleged perpetrator in person as provided in § 16.1-264, 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 on the alleged perpetrator in person as provided in § 16.1-264. 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. The preliminary order shall specify a date for the full hearing. The hearing shall be held within 15 days of the issuance of the preliminary order. If the respondent fails to appear at this hearing because the respondent was not personally served, the court may extend the protective order for a period not to exceed six months. The extended protective order shall be served as soon as possible on the respondent. 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 forthwith forward an attested copy of the preliminary protective order to primary law-enforcement agency and the agency shall forthwith verify and enter any modification as necessary into the Virginia Criminal Information Network as described above. 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.

C. The preliminary order is effective upon personal service on the alleged perpetrator. Except as otherwise provided, 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 § 19.2-152.10 if the court finds that the petitioner has proven the allegation that the petitioner is or has been, within a reasonable period of time, subjected to an act of violence, force, or threat by a preponderance of the evidence.

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

F. 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.

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