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HOUSE BILL NO. 1335

Offered January 10, 2018

A *BILL to amend and reenact §§ 16.1-253.2, 17.1-513, 18.2-60.4, 18.2-60.5, 18.2-119, and 18.2-308.1:4 of the Code of Virginia and to amend the Code of Virginia by adding in Article 6 of Chapter 4 of Title 18.2 a section numbered 18.2-60.6, relating to protective orders; issuance upon convictions for certain felonies; penalty.*

Patrons—Bourne, Bagby, Delaney, Levine, Lopez, Mullin, Plum, Rasoul, Simon and Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.2-253.2, 17.1-513, 18.2-60.4, 18.2-60.5, 18.2-119, and 18.2-308.1:4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 6 of Chapter 4 of Title 18.2 a section numbered 18.2-60.6 as follows:

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

A. 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, when such violation involves a provision of the protective order that prohibits such person from (i) going or remaining upon land, buildings, or premises; (ii) further acts of family abuse; or (iii) committing a criminal offense, or which prohibits contacts by the respondent with the allegedly abused person or family or household 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. The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence.

B. In addition to any other penalty provided by law, any person who, while knowingly armed with a firearm or other deadly weapon, violates any provision of a protective order with which he has been served 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 is guilty of a Class 6 felony.

C. If the respondent commits an assault and battery upon any party protected by the protective order resulting in bodily injury to the party or stalks any party protected by the protective order in violation of § 18.2-60.3, 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.

D. 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; *however, if the person is convicted under this section for an offense punishable as a felony, the court may enter a protective order pursuant to § 18.2-60.6.*

§ 17.1-513. Jurisdiction of circuit courts.

The circuit courts shall have jurisdiction of proceedings by quo warranto or information in the nature of quo warranto and to issue writs of mandamus, prohibition and certiorari to all inferior tribunals created or existing under the laws of the Commonwealth, and to issue writs of mandamus in all matters of proceedings arising from or pertaining to the action of the boards of supervisors or other governing bodies of the several counties for which such courts are respectively held or in other cases in which it may be necessary to prevent the failure of justice and in which mandamus may issue according to the principles of common law. They shall have appellate jurisdiction in all cases, civil and criminal, in which an appeal may, as provided by law, be taken from the judgment or proceedings of any inferior tribunal.

They shall have original and general jurisdiction of all civil cases, except cases upon claims to recover personal property or money not of greater value than \$100, exclusive of interest, and except

59 such cases as are assigned to some other tribunal; also in all cases for the recovery of fees in excess of
60 \$100; penalties or cases involving the right to levy and collect toll or taxes or the validity of an
61 ordinance or bylaw of any corporation; and also, of all cases, civil or criminal, in which an appeal may
62 be had to the Supreme Court.

63 They shall have jurisdiction to hear motions filed for the purpose of modifying, dissolving, or
64 extending a protective order pursuant to § 16.1-279.1, 18.2-60.6, or 19.2-152.10 if the circuit court
65 issued such order, unless the circuit court remanded the matter to the jurisdiction of the juvenile and
66 domestic relations district court in accordance with § 16.1-297. They shall also have original jurisdiction
67 of all indictments for felonies and of presentments, informations and indictments for misdemeanors.
68 They shall also have jurisdiction for bail hearings pursuant to §§ 19.2-327.2:1 and 19.2-327.10:1.

69 They shall have appellate jurisdiction of all cases, civil and criminal, in which an appeal, writ of
70 error or supersedeas may, as provided by law, be taken to or allowed by such courts, or the judges
71 thereof, from or to the judgment or proceedings of any inferior tribunal. They shall also have
72 jurisdiction of all other matters, civil and criminal, made cognizable therein by law and when a motion
73 to recover money is allowed in such tribunals, they may hear and determine the same, although it is to
74 recover less than \$100.

75 **§ 18.2-60.4. Violation of protective orders; penalty.**

76 A. Any person who violates any provision of a protective order issued pursuant to § 18.2-60.6,
77 19.2-152.8, 19.2-152.9, or 19.2-152.10 is guilty of a Class 1 misdemeanor. Conviction hereunder shall
78 bar a finding of contempt for the same act. The punishment for any person convicted of a second
79 offense of violating a protective order, when the offense is committed within five years of the prior
80 conviction and when either the instant or prior offense was based on an act or threat of violence, shall
81 include a mandatory minimum term of confinement of 60 days. Any person convicted of a third or
82 subsequent offense of violating a protective order, when the offense is committed within 20 years of the
83 first conviction and when either the instant or one of the prior offenses was based on an act or threat of
84 violence, is guilty of a Class 6 felony and the punishment shall include a mandatory minimum term of
85 confinement of six months. The mandatory minimum terms of confinement prescribed for violations of
86 this section shall be served consecutively with any other sentence.

87 B. In addition to any other penalty provided by law, any person who, while knowingly armed with a
88 firearm or other deadly weapon, violates any provision of a protective order with which he has been
89 served issued pursuant to § 18.2-60.6, 19.2-152.8, 19.2-152.9, or 19.2-152.10 is guilty of a Class 6
90 felony.

91 C. If the respondent commits an assault and battery upon any party protected by the protective order
92 resulting in bodily injury to the party or stalks any party protected by the protective order in violation of
93 § 18.2-60.3, he is guilty of a Class 6 felony. Any person who violates such a protective order by
94 furtively entering the home of any protected party while the party is present, or by entering and
95 remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in
96 addition to any other penalty provided by law.

97 D. Upon conviction of any offense hereunder for which a mandatory minimum term of confinement
98 is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire
99 term imposed be suspended.

100 E. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order
101 pursuant to § 19.2-152.10 for a specified period not exceeding two years from the date of conviction;
102 *however, if the person is convicted under this section for an offense punishable as a felony, the court*
103 *may enter a protective order pursuant to § 18.2-60.6.*

104 **§ 18.2-60.5. Unauthorized use of electronic tracking device; penalty.**

105 A. Any person who installs or places an electronic tracking device through intentionally deceptive
106 means and without consent, or causes an electronic tracking device to be installed or placed through
107 intentionally deceptive means and without consent, and uses such device to track the location of any
108 person is guilty of a Class 3 misdemeanor.

109 B. The provisions of this section shall not apply to the installation, placement, or use of an electronic
110 tracking device by:

111 1. A law-enforcement officer, judicial officer, probation or parole officer, or employee of the
112 Department of Corrections when any such person is engaged in the lawful performance of official duties
113 and in accordance with other state or federal law;

114 2. The parent or legal guardian of a minor when tracking (i) the minor or (ii) any person authorized
115 by the parent or legal guardian as a caretaker of the minor at any time when the minor is under the
116 person's sole care;

117 3. A legally authorized representative of an incapacitated adult, as defined in § 18.2-369;

118 4. The owner of fleet vehicles, when tracking such vehicles;

119 5. An electronic communications provider to the extent that such installation, placement, or use is
120 disclosed in the provider's terms of use, privacy policy, or similar document made available to the

121 customer; or

122 6. A registered private investigator, as defined in § 9.1-138, who is regulated in accordance with
123 § 9.1-139 and is acting in the normal course of his business and with the consent of the owner of the
124 property upon which the electronic tracking device is installed and placed. However, such exception
125 shall not apply if the private investigator is working on behalf of a client who is subject to a protective
126 order under § 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 18.2-60.6, 19.2-152.8, 19.2-152.9, or
127 19.2-152.10; or subsection B of § 20-103, or if the private investigator knows or should reasonably
128 know that the client seeks the private investigator's services to aid in the commission of a crime.

129 C. For the purposes of this section:

130 "Electronic tracking device" means an electronic or mechanical device that permits a person to
131 remotely determine or track the position and movement of another person.

132 "Fleet vehicle" means (i) one or more motor vehicles owned by a single entity and operated by
133 employees or agents of the entity for business or government purposes, (ii) motor vehicles held for lease
134 or rental to the general public, or (iii) motor vehicles held for sale by motor vehicle dealers.

135 **§ 18.2-60.6. Protective orders authorized upon conviction of certain felonies.**

136 A. For purposes of this section, "offense authorizing the issuance of a protective order" means any
137 felony violation of § 16.1-253.2, Article 1 (§ 18.2-30 et seq.), Article 3 (§ 18.2-47 et seq.), Article 4 (§
138 18.2-51 et seq.), this article, or Article 7 (§ 18.2-61 et seq.).

139 B. Upon request of the victim or the request of the attorney for the Commonwealth made on behalf
140 of the victim, the court may enter a protective order upon finding a person guilty of an offense
141 authorizing the issuance of a protective order for any period of time, including up to the lifetime of the
142 defendant, that the court deems necessary to protect the health and safety of the victim. A protective
143 order issued under this section may impose only the following conditions:

144 1. Prohibiting acts of family abuse or of violence, force, or threat against the victim or criminal
145 offenses that may result in injury to the person or property of the victim; and

146 2. Prohibiting such contacts by the defendant with the victim as the court deems necessary for the
147 health or safety of the victim.

148 C. The protective order shall expire at 11:59 p.m. on the last day specified in the protective order.
149 Prior to the expiration of the protective order, a victim may file a written motion requesting a hearing
150 to extend the order. Proceedings to extend a protective order shall be given precedence on the docket of
151 the court. The court may extend the protective order for a period the court deems necessary to protect
152 the health and safety of the victim. The extension of the protective order shall expire at 11:59 p.m. on
153 the last day specified in the protective order. Nothing herein shall limit the number of extensions that
154 may be requested or issued.

155 D. A copy of the protective order shall be served on the defendant and provided to the victim as
156 soon as possible. The court shall forthwith, but in all cases no later than the end of the business day on
157 which the order was issued, enter and transfer electronically to the Virginia Criminal Information
158 Network the defendant's identifying information and the name, date of birth, sex, and race of the victim
159 provided to the court and shall forthwith forward the attested copy of the protective order containing
160 any such identifying information to the primary law-enforcement agency responsible for service and
161 entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency
162 shall forthwith verify and enter any modification as necessary to the identifying information and other
163 appropriate information required by the Department of State Police into the Virginia Criminal
164 Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et
165 seq.) of Title 52 and the order shall be served forthwith upon the defendant and due return made to the
166 court. Upon service, the agency making service shall enter the date and time of service and other
167 appropriate information required into the Virginia Criminal Information Network and make due return
168 to the court. If the order is later dissolved or modified, a copy of the dissolution or modification order
169 shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for
170 service and entry of protective orders, and upon receipt of the order by the primary law-enforcement
171 agency, the agency shall forthwith verify and enter any modification as necessary to the identifying
172 information and other appropriate information required by the Department of State Police into the
173 Virginia Criminal Information Network as described above and the order shall be served forthwith and
174 due return made to the court.

175 E. Except as otherwise provided, a violation of a protective order issued under this section shall
176 constitute contempt of court. Upon a finding of contempt pursuant to this subsection or a conviction
177 under § 18.2-60.4 for violating a protective order issued pursuant to this section, the court may extend
178 the protective order for a period the court deems necessary to protect the health and safety of the
179 victim.

180 F. The victim may at any time file a written motion with the court requesting a hearing to dissolve
181 or modify the order. The defendant may file a written motion with the court requesting a hearing to

182 *dissolve or modify the order upon completion of all terms of sentencing and probation imposed upon*
183 *conviction for the offense authorizing the issuance of a protective order. The party filing the motion to*
184 *dissolve or modify an order shall provide notice of the motion to the other party and the court shall*
185 *conduct a hearing on any motion filed.*

186 *G. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's*
187 *office, nor any employee of them, may disclose, except among themselves, the residential address,*
188 *telephone number, or place of employment of the victim protected by the order or that of the family of*
189 *such victim, except to the extent that disclosure is (i) required by law or the Rules of the Supreme*
190 *Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.*

191 *H. No fees shall be charged for filing or serving petitions or motions pursuant to this section.*

192 **§ 18.2-119. Trespass after having been forbidden to do so; penalties.**

193 If any person without authority of law goes upon or remains upon the lands, buildings, or premises
194 of another, or any portion or area thereof, after having been forbidden to do so, either orally or in
195 writing, by the owner, lessee, or custodian, or the agent of any such person, or other person lawfully in
196 charge thereof, or after having been forbidden to do so by a sign or signs posted by or at the direction
197 of such persons or the agent of any such person or by the holder of any easement or other right-of-way
198 authorized by the instrument creating such interest to post such signs on such lands, structures, premises,
199 or portion or area thereof at a place or places where it or they may be reasonably seen, or if any person,
200 whether he is the owner, or tenant or otherwise entitled to the use of such land, building, or premises,
201 goes upon, or remains upon, such land, building, or premises after having been prohibited from doing so
202 by a court of competent jurisdiction by an order issued pursuant to §§ § 16.1-253, 16.1-253.1,
203 16.1-253.4, 16.1-278.2 through 16.1-278.6, 16.1-278.8, 16.1-278.14, 16.1-278.15, 16.1-279.1, 18.2-60.6,
204 19.2-152.8, 19.2-152.9 or § 19.2-152.10 or an ex parte order issued pursuant to § 20-103; and after
205 having been served with such order, he shall be is guilty of a Class 1 misdemeanor. This section shall
206 not be construed to affect in any way the provisions of §§ 18.2-132 through 18.2-136.

207 **§ 18.2-308.1:4. Purchase or transportation of firearm by persons subject to protective orders;**
208 **penalties.**

209 A. It is unlawful for any person who is subject to (i) a protective order entered pursuant to
210 § 16.1-253.1, 16.1-253.4, 16.1-278.2, 16.1-279.1, 18.2-60.6, 19.2-152.8, 19.2-152.9, or 19.2-152.10; (ii)
211 an order issued pursuant to subsection B of § 20-103; (iii) an order entered pursuant to subsection D of
212 § 18.2-60.3; (iv) a preliminary protective order entered pursuant to subsection F of § 16.1-253 where a
213 petition alleging abuse or neglect has been filed; or (v) an order issued by a tribunal of another state,
214 the United States or any of its territories, possessions, or commonwealths, or the District of Columbia
215 pursuant to a statute that is substantially similar to those cited in clauses (i), (ii), (iii), or (iv) to purchase
216 or transport any firearm while the order is in effect. Any person with a concealed handgun permit shall
217 be prohibited from carrying any concealed firearm, and shall surrender his permit to the court entering
218 the order, for the duration of any protective order referred to herein. A violation of this subsection is a
219 Class 1 misdemeanor.

220 B. In addition to the prohibition set forth in subsection A, it is unlawful for any person who is
221 subject to a protective order entered pursuant to § 16.1-279.1 or an order issued by a tribunal of another
222 state, the United States or any of its territories, possessions, or commonwealths, or the District of
223 Columbia pursuant to a statute that is substantially similar to § 16.1-279.1 to knowingly possess any
224 firearm while the order is in effect, provided that for a period of 24 hours after being served with a
225 protective order in accordance with subsection C of § 16.1-279.1 such person may continue to possess
226 and, notwithstanding the provisions of subsection A, transport any firearm possessed by such person at
227 the time of service for the purposes of selling or transferring any such firearm to any person who is not
228 otherwise prohibited by law from possessing such firearm. A violation of this subsection is a Class 6
229 felony.

230 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
231 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
232 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
233 **836 of the Acts of Assembly of 2017 requires the Virginia Criminal Sentencing Commission to**
234 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**
235 **necessary appropriation cannot be determined for periods of commitment to the custody of the**
236 **Department of Juvenile Justice.**