

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 16.1-112, 16.1-253.1, 16.1-296, and 19.2-152.9 of the Code of Virginia, relating to protective orders; contents of preliminary protective orders; docketing of an appeal.

[S 1540]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-112, 16.1-253.1, 16.1-296, and 19.2-152.9 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-112. All papers transmitted to appellate court; further proceedings.

The judge or clerk of any court from which an appeal is taken under this article shall promptly transmit to the clerk of the appellate court the case papers, which shall include the original warrant or warrants or other notices or pleadings with the judgment endorsed thereon, together with all pleadings, exhibits, and other papers filed in the trial of the case. The required bond, and, if applicable, the money deposited to secure such bond and the writ tax and costs paid pursuant to § 16.1-107 shall also be submitted, along with the fees for service of process of the notice of appeal in the circuit court. Upon receipt of the foregoing by the clerk of the appellate court, the case shall then be docketed, *except that an appeal from an order of protection issued pursuant to § 19.2-152.10 shall be assigned a case number within two business days upon receipt of such appeal.*

When such case has been docketed, the clerk of such appellate court shall by writing to be served, as provided in §§ 8.01-288, 8.01-293, 8.01-296, and 8.01-325, or by certified mail, with certified delivery receipt requested, notify the appellee, or by regular mail to his attorney, that such an appeal has been docketed in his office, provided that upon affidavit by the appellant or his agent in conformity with § 8.01-316 being filed with the clerk, the clerk shall post such notice at the front door of his courtroom and shall mail a copy thereof to the appellee at his last known address or place of abode or to his attorney, and he shall file a certificate of such posting and mailing with the papers in the case. No such appeal shall be heard unless it appears that the appellee or his attorney has had such notice, or that such certificate has been filed, 10 days before the date fixed for trial, or has in person or by attorney waived such notice.

§ 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 or a completed form as prescribed by subsection D of § 16.1-253.4 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

57 respondent to restore utility services to such premises.

58 5. Granting the petitioner and, where appropriate, any other family or household member of the
59 petitioner, exclusive use and possession of a cellular telephone number or electronic device. The court
60 may enjoin the respondent from terminating a cellular telephone number or electronic device before the
61 expiration of the contract term with a third-party provider. The court may enjoin the respondent from
62 using a cellular telephone or other electronic device to locate the petitioner.

63 6. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner
64 alone or jointly owned by the parties to the exclusion of the allegedly abusing person; however, no such
65 grant of possession or use shall affect title to the vehicle.

66 7. Requiring that the allegedly abusing person provide suitable alternative housing for the petitioner
67 and any other family or household member and, where appropriate, requiring the respondent to pay
68 deposits to connect or restore necessary utility services in the alternative housing provided.

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

71 9. Any other relief necessary for the protection of the petitioner and family or household members of
72 the petitioner.

73 B. The court shall forthwith, but in all cases no later than the end of the business day on which the
74 order was issued, enter and transfer electronically to the Virginia Criminal Information Network the
75 respondent's identifying information and the name, date of birth, sex, and race of each protected person
76 provided to the court. A copy of a preliminary protective order containing any such identifying
77 information shall be forwarded forthwith to the primary law-enforcement agency responsible for service
78 and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the
79 agency shall forthwith verify and enter any modification as necessary to the identifying information and
80 other appropriate information required by the Department of State Police into the Virginia Criminal
81 Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et
82 seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as
83 provided in § 16.1-264 and due return made to the court. However, if the order is issued by the circuit
84 court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the
85 respondent's identifying information and the name, date of birth, sex, and race of each protected person
86 provided to the court to the primary law-enforcement agency providing service and entry of protective
87 orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the
88 person subject to the order and other appropriate information required by the Department of State Police
89 into the Virginia Criminal Information Network established and maintained by the Department pursuant
90 to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly
91 abusing person in person as provided in § 16.1-264. Upon service, the agency making service shall enter
92 the date and time of service and other appropriate information required by the Department of State
93 Police into the Virginia Criminal Information Network and make due return to the court. The
94 preliminary order shall specify a date for the full hearing. The hearing shall be held within 15 days of
95 the issuance of the preliminary order. If the respondent fails to appear at this hearing because the
96 respondent was not personally served, or if personally served was incarcerated and not transported to the
97 hearing, the court may extend the protective order for a period not to exceed six months. The extended
98 protective order shall be served forthwith on the respondent. However, upon motion of the respondent
99 and for good cause shown, the court may continue the hearing. The preliminary order shall remain in
100 effect until the hearing. Upon request after the order is issued, the clerk shall provide the petitioner with
101 a copy of the order and information regarding the date and time of service. The order shall further
102 specify that either party may at any time file a motion with the court requesting a hearing to dissolve or
103 modify the order. The hearing on the motion shall be given precedence on the docket of the court.

104 Upon receipt of the return of service or other proof of service pursuant to subsection C of
105 § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to the
106 primary law-enforcement agency, and the agency shall forthwith verify and enter any modification as
107 necessary into the Virginia Criminal Information Network as described above. If the order is later
108 dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded
109 forthwith to the primary law-enforcement agency responsible for service and entry of protective orders,
110 and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify
111 and enter any modification as necessary to the identifying information and other appropriate information
112 required by the Department of State Police into the Virginia Criminal Information Network as described
113 above and the order shall be served forthwith and due return made to the court.

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

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

118 evidence.

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

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

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

126 H. Upon issuance of a preliminary protective order, the clerk of the court shall make available to the
127 petitioner information that is published by the Department of Criminal Justice Services for victims of
128 domestic violence or for petitioners in protective order cases.

129 **§ 16.1-296. Jurisdiction of appeals; procedure.**

130 A. From any final order or judgment of the juvenile court affecting the rights or interests of any
131 person coming within its jurisdiction, an appeal may be taken to the circuit court within 10 days from
132 the entry of a final judgment, order or conviction and shall be heard de novo. However, in a case
133 arising under the Uniform Interstate Family Support Act (§ 20-88.32 et seq.), a party may take an appeal
134 pursuant to this section within 30 days from entry of a final order or judgment. Protective orders issued
135 pursuant to § 16.1-279.1 in cases of family abuse and orders entered pursuant to § 16.1-278.2 are final
136 orders from which an appeal may be taken.

137 B. Upon receipt of notice of such appeal the juvenile court shall forthwith transmit to the attorney
138 for the Commonwealth a report incorporating the results of any investigation conducted pursuant to
139 § 16.1-273, which shall be confidential in nature and made available only to the court and the attorney
140 for the defendant (i) after the guilt or innocence of the accused has been determined or (ii) after the
141 court has made its findings on the issues subject to appeal. After final determination of the case, the
142 report and all copies thereof shall be forthwith returned to such juvenile court.

143 C. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition
144 pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act
145 may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the
146 alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall
147 be entitled to a jury of 12 persons. In all other cases, the jury shall consist of seven persons. If the jury
148 in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of
149 § 16.1-278.8 after taking into consideration the report of any investigation made pursuant to § 16.1-237
150 or 16.1-273.

151 C1. In any hearing held upon an appeal taken by a child on a finding that he is delinquent and on a
152 disposition pursuant to § 16.1-278.8, the provisions of § 16.1-302 shall apply mutatis mutandis, except in
153 the case of trial by jury which shall be open. If proceedings in the circuit court are closed pursuant to
154 this subsection, any records or portions thereof relating to such closed proceedings shall remain
155 confidential.

156 C2. Where an appeal is taken by a juvenile on a finding that he is delinquent and on a disposition
157 pursuant to § 16.1-278.8 and the juvenile is in a secure facility pending the appeal, the circuit court,
158 when practicable, shall hold a hearing on the merits of the case within 45 days of the filing of the
159 appeal. Upon receipt of the notice of appeal from the juvenile court, the circuit court shall provide a
160 copy of the order and a copy of the notice of appeal to the attorney for the Commonwealth within seven
161 days after receipt of notice of an appeal. The time limitations shall be tolled during any period in which
162 the juvenile has escaped from custody. A juvenile held continuously in secure detention shall be released
163 from confinement if there is no hearing on the merits of his case within 45 days of the filing of the
164 appeal. The circuit court may extend the time limitations for a reasonable period of time based upon
165 good cause shown, provided the basis for such extension is recorded in writing and filed among the
166 papers of the proceedings.

167 D. When an appeal is taken in a case involving termination of parental rights brought under
168 § 16.1-283, the circuit court shall hold a hearing on the merits of the case within 90 days of the
169 perfecting of the appeal. An appeal of the case to the Court of Appeals shall take precedence on the
170 docket of the Court.

171 E. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction
172 of the juvenile and domestic relations district court, the appeal shall be dealt with in all respects as is an
173 appeal from a general district court pursuant to §§ 16.1-132 through 16.1-137; however, where an appeal
174 is taken by any person on a charge of nonsupport, the procedure shall be as is provided for appeals in
175 prosecutions under Chapter 5 (§ 20-61 et seq.) of Title 20.

176 F. In all other cases on appeal, proceedings in the circuit court shall be heard without a jury;
177 however, hearing of an issue by an advisory jury may be allowed, in the discretion of the judge, upon
178 the motion of any party. An appeal from an order of protection issued pursuant to § 16.1-279.1 shall be

179 given precedence on the docket of the court over other civil appeals taken to the circuit court from the
 180 district courts; ~~but and shall otherwise be docketed and processed as other civil cases assigned a case~~
 181 ~~number within two business days of receipt of such appeal.~~

182 G. Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee
 183 could have been assessed in the juvenile and domestic relations court and shall be collected in the
 184 circuit court, except that the appeal to circuit court of any case in which a fee either was or could have
 185 been assessed pursuant to § 16.1-69.48:5 shall also be in accordance with § 16.1-296.2.

186 H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic
 187 relations district court except for that portion of any order or judgment establishing a support arrearage
 188 or suspending payment of support during pendency of an appeal. In cases involving support, no appeal
 189 shall be allowed until the party applying for the same or someone for him gives bond, in an amount and
 190 with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment
 191 as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment
 192 of the court in which it was rendered. Upon appeal from a conviction for failure to support or from a
 193 finding of civil or criminal contempt involving a failure to support, the juvenile and domestic relations
 194 district court may require the party applying for the appeal or someone for him to give bond, with or
 195 without surety, to insure his appearance and may also require bond in an amount and with sufficient
 196 surety to secure the payment of prospective support accruing during the pendency of the appeal. An
 197 appeal will not be perfected unless such appeal bond as may be required is filed within 30 days from
 198 the entry of the final judgment or order. However, no appeal bond shall be required of the
 199 Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict or
 200 an insane person, or the interest of a county, city or town.

201 If bond is furnished by or on behalf of any party against whom judgment has been rendered for
 202 money, the bond shall be conditioned for the performance and satisfaction of such judgment or order as
 203 may be entered against the party on appeal, and for the payment of all damages which may be awarded
 204 against him in the appellate court. If the appeal is by a party against whom there is no recovery, the
 205 bond shall be conditioned for the payment of any damages as may be awarded against him on the
 206 appeal. The provisions of § 16.1-109 shall apply to bonds required pursuant to this subsection.

207 This subsection shall not apply to release on bail pursuant to other subsections of this section or
 208 § 16.1-298.

209 I. In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers
 210 and authority granted by the chapter to the juvenile and domestic relations district court. Unless
 211 otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint
 212 counsel for the parties and compensate such counsel in accordance with the provisions of Article 6
 213 (§ 16.1-266 et seq.) of this chapter.

214 J. In any case which has been referred or transferred from a circuit court to a juvenile court and an
 215 appeal is taken from an order or judgment of the juvenile court, the appeal shall be taken to the circuit
 216 court in the same locality as the juvenile court to which the case had been referred or transferred.

217 **§ 19.2-152.9. Preliminary protective orders.**

218 A. Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable
 219 period of time, subjected to an act of violence, force, or threat, or (ii) a petition or warrant has been
 220 issued for the arrest of the alleged perpetrator for any criminal offense resulting from the commission of
 221 an act of violence, force, or threat, the court may issue a preliminary protective order against the alleged
 222 perpetrator in order to protect the health and safety of the petitioner or any family or household member
 223 of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the
 224 petition is supported by an affidavit or sworn testimony before the judge or intake officer. *If an ex parte*
 225 *order is issued without an affidavit or a completed form as prescribed by subsection D of § 19.2-152.8*
 226 *being presented, the court, in its order, shall state the basis upon which the order was entered,*
 227 *including a summary of the allegations made and the court's findings.* Immediate and present danger of
 228 any act of violence, force, or threat or evidence sufficient to establish probable cause that an act of
 229 violence, force, or threat has recently occurred shall constitute good cause.

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

232 1. Prohibiting acts of violence, force, or threat or criminal offenses that may result in injury to
 233 person or property;

234 2. Prohibiting such other contacts by the respondent with the petitioner or the petitioner's family or
 235 household members as the court deems necessary for the health and safety of such persons;

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

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

240 petitioner meets the definition of owner in § 3.2-6500.

241 B. The court shall forthwith, but in all cases no later than the end of the business day on which the
242 order was issued, enter and transfer electronically to the Virginia Criminal Information Network the
243 respondent's identifying information and the name, date of birth, sex, and race of each protected person
244 provided to the court. A copy of a preliminary protective order containing any such identifying
245 information shall be forwarded forthwith to the primary law-enforcement agency responsible for service
246 and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the
247 agency shall forthwith verify and enter any modification as necessary to the identifying information and
248 other appropriate information required by the Department of State Police into the Virginia Criminal
249 Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et
250 seq.) of Title 52 and the order shall be served forthwith on the alleged perpetrator in person as provided
251 in § 16.1-264, and due return made to the court. However, if the order is issued by the circuit court, the
252 clerk of the circuit court shall forthwith forward an attested copy of the order containing the
253 respondent's identifying information and the name, date of birth, sex, and race of each protected person
254 provided to the court to the primary law-enforcement agency providing service and entry of protective
255 orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the
256 person subject to the order and other appropriate information required by the Department of State Police
257 into the Virginia Criminal Information Network established and maintained by the Department pursuant
258 to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the alleged
259 perpetrator in person as provided in § 16.1-264. Upon service, the agency making service shall enter the
260 date and time of service and other appropriate information required by the Department of State Police
261 into the Virginia Criminal Information Network and make due return to the court. The preliminary order
262 shall specify a date for the full hearing. The hearing shall be held within 15 days of the issuance of the
263 preliminary order. If the respondent fails to appear at this hearing because the respondent was not
264 personally served, the court may extend the protective order for a period not to exceed six months. The
265 extended protective order shall be served as soon as possible on the respondent. However, upon motion
266 of the respondent and for good cause shown, the court may continue the hearing. The preliminary order
267 shall remain in effect until the hearing. Upon request after the order is issued, the clerk shall provide the
268 petitioner with a copy of the order and information regarding the date and time of service. The order
269 shall further specify that either party may at any time file a motion with the court requesting a hearing
270 to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of
271 the court.

272 Upon receipt of the return of service or other proof of service pursuant to subsection C of
273 § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to
274 primary law-enforcement agency and the agency shall forthwith verify and enter any modification as
275 necessary into the Virginia Criminal Information Network as described above. If the order is later
276 dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded
277 forthwith to the primary law-enforcement agency responsible for service and entry of protective orders,
278 and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify
279 and enter any modification as necessary to the identifying information and other appropriate information
280 required by the Department of State Police into the Virginia Criminal Information Network as described
281 above and the order shall be served forthwith and due return made to the court.

282 C. The preliminary order is effective upon personal service on the alleged perpetrator. Except as
283 otherwise provided, a violation of the order shall constitute contempt of court.

284 D. At a full hearing on the petition, the court may issue a protective order pursuant to § 19.2-152.10
285 if the court finds that the petitioner has proven the allegation that the petitioner is or has been, within a
286 reasonable period of time, subjected to an act of violence, force, or threat by a preponderance of the
287 evidence.

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

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

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

295 H. Upon issuance of a preliminary protective order, the clerk of the court shall make available to the
296 petitioner information that is published by the Department of Criminal Justice Services for victims of
297 domestic violence or for petitioners in protective order cases.