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SENATE BILL NO. 174

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 2, 2022)

(Patron Prior to Substitute—Senator Peake)

*A BILL to amend and reenact §§ 19.2-152.9 and 19.2-152.10 of the Code of Virginia, relating to permanent protective orders; contact between petitioner and respondent.***Be it enacted by the General Assembly of Virginia:****1. That §§ 19.2-152.9 and 19.2-152.10 of the Code of Virginia are amended and reenacted as follows:****§ 19.2-152.9. Preliminary protective orders.**

A. Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable period of time, subjected to an act of violence, force, or threat, or (ii) a petition or warrant has been issued for the arrest of the alleged perpetrator for any criminal offense resulting from the commission of an act of violence, force, or threat, the court may issue a preliminary protective order against the alleged perpetrator 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 § 19.2-152.8 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 any act of violence, force, or threat or evidence sufficient to establish probable cause that an act of violence, force, or threat has recently occurred shall constitute good cause.

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

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

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, unless the court is closed pursuant to § 16.1-69.35 or 17.1-207 and such closure prevents the hearing from being held within such time period, in which case the hearing shall be held on the next day not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. If

60 such court is closed pursuant to § 16.1-69.35 or 17.1-207, the preliminary protective order shall remain
61 in full force and effect until it is dissolved by such court, until another preliminary protective order is
62 entered, or until a protective order is entered. If the respondent fails to appear at this hearing because
63 the respondent was not personally served, the court may extend the protective order for a period not to
64 exceed six months. The extended protective order shall be served as soon as possible on the respondent.
65 However, upon motion of the respondent and for good cause shown, the court may continue the hearing.
66 The preliminary order shall remain in effect until the hearing. Upon request after the order is issued, the
67 clerk shall provide the petitioner with a copy of the order and information regarding the date and time
68 of service. The order shall further specify that either party may at any time file a motion with the court
69 requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given
70 precedence on the docket of the court. Upon petitioner's motion to dissolve the preliminary protective
71 order, a dissolution order may be issued ex parte by the court with or without a hearing. If an ex parte
72 hearing is held, it shall be heard by the court as soon as practicable. If a dissolution order is issued ex
73 parte, the court shall serve a copy of such dissolution order on respondent in conformity with
74 §§ 8.01-286.1 and 8.01-296.

75 Upon receipt of the return of service or other proof of service pursuant to subsection C of
76 § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to
77 primary law-enforcement agency and the agency shall forthwith verify and enter any modification as
78 necessary into the Virginia Criminal Information Network as described above. If the order is later
79 dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded
80 forthwith to the primary law-enforcement agency responsible for service and entry of protective orders,
81 and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify
82 and enter any modification as necessary to the identifying information and other appropriate information
83 required by the Department of State Police into the Virginia Criminal Information Network as described
84 above and the order shall be served forthwith and due return made to the court.

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

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

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

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

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

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

101 *I. It shall be an affirmative defense to prosecution of a violation of a protective order issued under*
102 *this section that is punishable as contempt of court or as a violation of § 18.2-60.4 when the petitioner*
103 *initiated or instigated contact with the respondent and the respondent subsequently violated a condition*
104 *imposed on him in response to such initiated or instigated conduct.*

105 **§ 19.2-152.10. Protective order.**

106 A. The court may issue a protective order pursuant to this chapter to protect the health and safety of
107 the petitioner and family or household members of a petitioner upon (i) the issuance of a petition or
108 warrant for, or a conviction of, any criminal offense resulting from the commission of an act of
109 violence, force, or threat or (ii) a hearing held pursuant to subsection D of § 19.2-152.9. A protective
110 order issued under this section may include any one or more of the following conditions to be imposed
111 on the respondent:

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

114 2. Prohibiting such contacts by the respondent with the petitioner or family or household members of
115 the petitioner as the court deems necessary for the health or safety of such persons;

116 3. Any other relief necessary to prevent (i) acts of violence, force, or threat, (ii) criminal offenses
117 that may result in injury to person or property, or (iii) communication or other contact of any kind by
118 the respondent; and

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

121 B. Except as provided in subsection C, the protective order may be issued for a specified period of

time up to a maximum of two years. The protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Prior to the expiration of the protective order, a petitioner may file a written motion requesting a hearing to extend the order. Proceedings to extend a protective order shall be given precedence on the docket of the court. The court may extend the protective order for a period not longer than two years to protect the health and safety of the petitioner or persons who are family or household members of the petitioner at the time the request for an extension is made. The extension of the protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Nothing herein shall limit the number of extensions that may be requested or issued.

C. Upon conviction for an act of violence as defined in § 19.2-297.1 and upon the request of the victim or of the attorney for the Commonwealth on behalf of the victim, the court may issue a protective order to the victim pursuant to this chapter to protect the health and safety of the victim. The protective order may be issued for any reasonable period of time, including up to the lifetime of the defendant, that the court deems necessary to protect the health and safety of the victim. The protective order shall expire at 11:59 p.m. on the last day specified in the protective order, if any. Upon a conviction for violation of a protective order issued pursuant to this subsection, the court that issued the original protective order may extend the protective order as the court deems necessary to protect the health and safety of the victim. The extension of the protective order shall expire at 11:59 p.m. on the last day specified, if any. Nothing herein shall limit the number of extensions that may be issued.

D. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. The court, including a circuit court if the circuit court issued the order, 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 and shall forthwith forward the attested copy of the protective order and containing any such identifying information 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. 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. 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.

E. Except as otherwise provided, a violation of a protective order issued under this section shall constitute contempt of court.

F. The court may assess costs and attorneys' fees against either party regardless of whether an order of protection has been issued as a result of a full hearing.

G. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such person's due process rights and consistent with federal law. A person entitled to protection under such a foreign order may file the order in any appropriate district court by filing with the court, an attested or exemplified copy of the order. Upon such a filing, the clerk shall forthwith forward an attested copy of the order to the primary law-enforcement agency responsible for service and entry of protective orders which shall, upon receipt, 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. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network.

Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy

183 available of any foreign order filed with that court. A law-enforcement officer may, in the performance
184 of his duties, rely upon a copy of a foreign protective order or other suitable evidence which has been
185 provided to him by any source and may also rely upon the statement of any person protected by the
186 order that the order remains in effect.

187 H. Either party may at any time file a written motion with the court requesting a hearing to dissolve
188 or modify the order. Proceedings to modify or dissolve a protective order shall be given precedence on
189 the docket of the court. Upon petitioner's motion to dissolve the protective order, a dissolution order
190 may be issued ex parte by the court with or without a hearing. If an ex parte hearing is held, it shall be
191 heard by the court as soon as practicable. If a dissolution order is issued ex parte, the court shall serve a
192 copy of such dissolution order on respondent in conformity with §§ 8.01-286.1 and 8.01-296.

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

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

199 K. As used in this section:

200 "Copy" includes a facsimile copy; and

201 "Protective order" includes an initial, modified or extended protective order.

202 L. Upon issuance of a protective order, the clerk of the court shall make available to the petitioner
203 information that is published by the Department of Criminal Justice Services for victims of domestic
204 violence or for petitioners in protective order cases.

205 M. An appeal of a protective order issued pursuant to this section shall be given expedited review by
206 the Court of Appeals.

207 *N. It shall be an affirmative defense to prosecution of a violation of a protective order issued under*
208 *this section that is punishable as contempt of court or as a violation of § 18.2-60.4 when the petitioner*
209 *initiated or instigated contact with the respondent and the respondent subsequently violated a condition*
210 *imposed on him in response to such initiated or instigated conduct.*