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SENATE BILL NO. 895

Offered January 11, 2023

Prefiled January 5, 2023

A BILL to amend and reenact §§ 8.01-626, 8.01-675.5, 16.1-279.1, 17.1-405, and 19.2-152.10 of the Code of Virginia, relating to appeals of certain interlocutory decrees or orders; report.

Patron—Surovell

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-626, 8.01-675.5, 16.1-279.1, 17.1-405, and 19.2-152.10 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-626. Review of injunction; petitions for review.

When a circuit court (i) grants a preliminary or permanent injunction, (ii) refuses such an injunction, or (iii) having granted such an injunction, dissolves or refuses to enlarge it; ~~or (iv) enters an order reviewable pursuant to subsection B of § 8.01-675.5,~~ an aggrieved party may file a petition for review with the clerk of the Supreme Court within 15 days of the circuit court's order.

The clerk shall assign the petition to a three-justice panel of the Supreme Court. The aggrieved party shall serve a copy of the petition for review on the counsel for the opposing party, which may file a response within seven days from the date of service unless the court determines a shorter time frame. The petition for review shall be accompanied by a copy of the proceedings before the circuit court, including the original papers and the circuit court's order respecting the injunction. The Supreme Court may take such action thereon as it considers appropriate under the circumstances of the case.

Nothing in this section shall be construed to prevent the Supreme Court from resolving a petition for review by an order joined by more than three justices.

§ 8.01-675.5. Appeal of interlocutory orders and decrees by permission; immunity.

A. When, prior to the commencement of trial, the circuit court has entered in any pending civil action an order or decree that is not otherwise appealable, any party may file in the circuit court a motion requesting that the circuit court certify such order or decree for interlocutory appeal.

The motion shall include a concise analysis of the statutes, rules, or cases believed to be determinative of the issues and request that the court certify in writing that the order or decree involves a question of law as to which (i) there is substantial ground for difference of opinion; (ii) there is no clear, controlling precedent on point in the decisions of the Supreme Court of Virginia or the Court of Appeals of Virginia; (iii) determination of the issues will be dispositive of a material aspect of the proceeding currently pending before the court; and (iv) it is in the parties' best interest to seek an interlocutory appeal. If the request for certification is opposed by any party, the parties may brief the motion in accordance with the Rules of Supreme Court of Virginia.

Within 15 days of the entry of an order by the circuit court granting such certification, a petition for appeal may be filed with the Court of Appeals. If the Court of Appeals determines that the certification by the circuit court has sufficient merit, it may, in its discretion, permit an appeal to be taken from the interlocutory order or decree and shall notify the certifying circuit court and counsel for the parties of its decision.

The consideration of any petition and appeal by the Court of Appeals shall be in accordance with the applicable provisions of the Rules of the Supreme Court of Virginia and shall not take precedence on the docket unless the court so orders.

B. When, prior to the commencement of trial, the circuit court has entered in any pending civil action an order granting or denying a plea of sovereign, absolute, or qualified immunity that, if granted, would immunize the movant from compulsory participation in the proceeding, the order is eligible for immediate appellate review. Any person aggrieved by such order may, within 15 days of the entry of such order, file a petition for review with the Supreme Court in accordance with the procedures set forth in ~~§ 8.01-626 of Appeals.~~ *The clerk shall assign the petition to a panel of the Court, as the Court shall direct, and the parties shall prosecute the appeal in the manner provided for in the Rules of Supreme Court of Virginia.*

C. No petitions or appeals under this section shall stay proceedings in the circuit court unless the circuit court or appellate court orders such a stay upon a finding that (i) the petition or appeal could be dispositive of the entire civil action or (ii) there exists good cause, other than the pending petition or appeal, to stay the proceedings.

D. The failure of a party to seek interlocutory review under this section shall not preclude review of

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the issue on appeal from a final order. An order by the Supreme Court or Court of Appeals denying interlocutory review under this section shall not preclude review of the issue on appeal from a final order, unless the order denying such interlocutory review provides for such preclusion.

§ 16.1-279.1. Protective order in cases of family abuse.

A. In cases of family abuse, including any case involving an incarcerated or recently incarcerated respondent against whom a preliminary protective order has been issued pursuant to § 16.1-253.1, the court may issue a protective order to protect the health and safety of the petitioner and family or household members of the petitioner. A protective order issued under this section may include any one or more of the following conditions to be imposed 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 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 residence 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;

4. Enjoining the respondent from terminating any necessary utility service to the residence to which the petitioner was granted possession pursuant to subdivision 3 or, where appropriate, ordering the respondent to restore utility services to that residence;

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

6. 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 respondent and enjoining the respondent from terminating any insurance, registration, or taxes on the motor vehicle and directing the respondent to maintain the insurance, registration, and taxes, as appropriate; however, no such grant of possession or use shall affect title to the vehicle;

7. Requiring that the respondent provide suitable alternative housing for the petitioner and, if appropriate, 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;

8. Ordering the respondent to participate in treatment, counseling or other programs as the court deems appropriate;

9. 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; and

10. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner, including a provision for temporary custody or visitation of a minor child.

A1. If a protective order is issued pursuant to subsection A, the court may also issue a temporary child support order for the support of any children of the petitioner whom the respondent has a legal obligation to support. Such order shall terminate upon the determination of support pursuant to § 20-108.1.

B. 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. If the petitioner was a family or household member of the respondent at the time the initial protective order was issued, 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. 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 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 by the Department of State Police 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.

D. Except as otherwise provided in § 16.1-253.2, a violation of a protective order issued under this section shall constitute contempt of court.

E. 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.

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

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

H. As used in this section:

"Copy" includes a facsimile copy; and

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

I. 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.

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

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

L. An appeal of a *final* protective order issued by a circuit court pursuant to this section shall be given expedited review by the Court of Appeals.

§ 17.1-405. Appellate jurisdiction — Administrative agency, Virginia Workers' Compensation Commission, and civil matter appeals.

A. Unless otherwise provided by law, any aggrieved party may appeal to the Court of Appeals from:

1. Any final decision of a circuit court on appeal from (i) a decision of an administrative agency, or (ii) a grievance hearing decision issued pursuant to § 2.2-3005;

2. Any final decision of the Virginia Workers' Compensation Commission;

182 3. Except as provided in subsection B of § 17.1-406, any final judgment, order, or decree of a circuit
183 court in a civil matter;

184 4. Any interlocutory decree or order pursuant to § 8.01-267.8 or 8.01-675.5;

185 5. ~~Any~~ Except as provided in subsection B, any interlocutory decree or order involving an equitable
186 claim in which the decree or order (i) requires money to be paid or the possession or title of property to
187 be changed or (ii) adjudicates the principles of a cause; or

188 6. Any final judgment, order, or decree of a circuit court (i) involving an application for a concealed
189 weapons permit pursuant to Article 6.1 (§ 18.2-307.1 et seq.) of Chapter 7 of Title 18.2, (ii) involving
190 involuntary treatment of prisoners pursuant to § 53.1-40.1 or 53.1-133.04, or (iii) for declaratory or
191 injunctive relief under § 57-2.02.

192 *B. No interlocutory decree or order shall be appealed if such decree or order involves:*

193 1. Affirmance or annulment of a marriage;

194 2. Divorce;

195 3. Custody of a minor child;

196 4. Spousal or child support;

197 5. Control or disposition of a minor child;

198 6. Any other domestic relations matter arising under Title 16.1 or 20; or

199 7. Any protective order other than a final protective order issued by a circuit court.

200 **§ 19.2-152.10. Protective order.**

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

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

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

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

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

216 B. Except as provided in subsection C, the protective order may be issued for a specified period of
217 time up to a maximum of two years. The protective order shall expire at 11:59 p.m. on the last day
218 specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Prior to the
219 expiration of the protective order, a petitioner may file a written motion requesting a hearing to extend
220 the order. Proceedings to extend a protective order shall be given precedence on the docket of the court.
221 The court may extend the protective order for a period not longer than two years to protect the health
222 and safety of the petitioner or persons who are family or household members of the petitioner at the
223 time the request for an extension is made. The extension of the protective order shall expire at 11:59
224 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
225 specified. Nothing herein shall limit the number of extensions that may be requested or issued.

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

236 D. A copy of the protective order shall be served on the respondent and provided to the petitioner as
237 soon as possible. The court, including a circuit court if the circuit court issued the order, shall forthwith,
238 but in all cases no later than the end of the business day on which the order was issued, enter and
239 transfer electronically to the Virginia Criminal Information Network the respondent's identifying
240 information and the name, date of birth, sex, and race of each protected person provided to the court
241 and shall forthwith forward the attested copy of the protective order and containing any such identifying
242 information to the primary law-enforcement agency responsible for service and entry of protective
243 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 available of any foreign order filed with that court. A law-enforcement officer may, in the performance of his duties, rely upon a copy of a foreign protective order or other suitable evidence which has been provided to him by any source and may also rely upon the statement of any person protected by the order that the order remains in effect.

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

I. 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.

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

K. As used in this section:

"Copy" includes a facsimile copy; and

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

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

M. An appeal of a *final* protective order issued by a *circuit court* pursuant to this section shall be given expedited review by the Court of Appeals.

2. That the Virginia Family Law Coalition (the Coalition) shall conduct a study on appeals of interlocutory decrees or orders involving domestic relations matters in the Commonwealth. The Coalition shall report the findings of such study to the Chairmen of the Senate Committee on the

305 Judiciary and the House Committee for Courts of Justice by October 1, 2023.

306 3. That the Supreme Court of Virginia shall promulgate rules no later than November 1, 2023,
307 governing the appeal of an interlocutory order granting or denying a plea of sovereign, absolute,
308 or qualified immunity. Such rules shall be consistent with the procedures set forth in § 8.01-626 of
309 the Code of Virginia, as amended by this act.