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1 **HOUSE BILL NO. 2263**

2 Offered January 13, 2025

3 Prefiled January 7, 2025

4 *A BILL to amend and reenact §§ 16.1-253 and 16.1-253.2 of the Code of Virginia, relating to violations of*
5 *protective orders; preliminary child protective order; penalties.*

6 Patron—Kent

7 Referred to Committee for Courts of Justice

8 **Be it enacted by the General Assembly of Virginia:**9 **1. That §§ 16.1-253 and 16.1-253.2 of the Code of Virginia are amended and reenacted as follows:**10 **§ 16.1-253. Preliminary protective order.**11 A. Upon the motion of any person or upon the court's own motion, the court may issue a preliminary
12 protective order, after a hearing, if necessary to protect a child's life, health, safety or normal development
13 pending the final determination of any matter before the court. The order may require a child's parents,
14 guardian, legal custodian, other person standing in loco parentis or other family or household member of the
15 child to observe reasonable conditions of behavior for a specified length of time. These conditions shall
16 include any one or more of the following:17 1. To abstain from offensive conduct against the child, a family or household member of the child or any
18 person to whom custody of the child is awarded;19 2. To cooperate in the provision of reasonable services or programs designed to protect the child's life,
20 health or normal development;21 3. To allow persons named by the court to come into the child's home at reasonable times designated by
22 the court to visit the child or inspect the fitness of the home and to determine the physical or emotional health
23 of the child;

24 4. To allow visitation with the child by persons entitled thereto, as determined by the court;

25 5. To refrain from acts of commission or omission which tend to endanger the child's life, health or
26 normal development;27 6. To refrain from such contact with the child or family or household members of the child, as the court
28 may deem appropriate, including removal of such person from the residence of the child. However, prior to
29 the issuance by the court of an order removing such person from the residence of the child, the petitioner
30 must prove by a preponderance of the evidence that such person's probable future conduct would constitute a
31 danger to the life or health of such child, and that there are no less drastic alternatives which could reasonably
32 and adequately protect the child's life or health pending a final determination on the petition; or33 7. To grant the person on whose behalf the order is issued the possession of any companion animal as
34 defined in § 3.2-6500 if such person meets the definition of owner in § 3.2-6500.35 B. A preliminary protective order may be issued ex parte upon motion of any person or the court's own
36 motion in any matter before the court, or upon petition. The motion or petition shall be supported by an
37 affidavit or by sworn testimony in person before the judge or intake officer which establishes that the child
38 would be subjected to an imminent threat to life or health to the extent that delay for the provision of an
39 adversary hearing would be likely to result in serious or irremediable injury to the child's life or health. If an
40 ex parte order is issued without an affidavit being presented, the court, in its order, shall state the basis upon
41 which the order was entered, including a summary of the allegations made and the court's findings. Following
42 the issuance of an ex parte order the court shall provide an adversary hearing to the affected parties within the
43 shortest practicable time not to exceed five business days after the issuance of the order.44 C. Prior to the hearing required by this section, notice of the hearing shall be given at least 24 hours in
45 advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian, or other
46 person standing in loco parentis of the child, to any other family or household member of the child to whom
47 the protective order may be directed and to the child if he or she is 12 years of age or older. The notice
48 provided herein shall include (i) the time, date and place for the hearing and (ii) a specific statement of the
49 factual circumstances which allegedly necessitate the issuance of a preliminary protective order.

50 D. All parties to the hearing shall be informed of their right to counsel pursuant to § 16.1-266.

51 E. At the hearing the child, his or her parents, guardian, legal custodian or other person standing in loco
52 parentis and any other family or household member of the child to whom notice was given shall have the
53 right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own
54 behalf.55 F. If a petition alleging abuse or neglect of a child has been filed, at the hearing pursuant to this section
56 the court shall determine whether the allegations of abuse or neglect have been proven by a preponderance of

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59 the evidence. Any finding of abuse or neglect shall be stated in the court order. However, if, before such a
60 finding is made, a person responsible for the care and custody of the child, the child's guardian ad litem or the
61 local department of social services objects to a finding being made at the hearing, the court shall schedule an
62 adjudicatory hearing to be held within 30 days of the date of the initial preliminary protective order hearing.
63 The adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been
64 proven by a preponderance of the evidence. Parties who are present at the hearing shall be given notice of the
65 date set for the adjudicatory hearing and parties who are not present shall be summoned as provided in §
66 16.1-263. The adjudicatory hearing shall be held and an order may be entered, although a party to the hearing
67 fails to appear and is not represented by counsel, provided personal or substituted service was made on the
68 person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a
69 person who is without the Commonwealth, the person cannot be found or his post office address cannot be
70 ascertained after reasonable effort.

71 Any preliminary protective order issued shall remain in full force and effect pending the adjudicatory
72 hearing.

73 G. If at the preliminary protective order hearing held pursuant to this section the court makes a finding of
74 abuse or neglect and a preliminary protective order is issued, a dispositional hearing shall be held pursuant to
75 § 16.1-278.2. The court shall forthwith, but in all cases no later than the end of the business day on which the
76 order was issued, enter and transfer electronically to the Virginia Criminal Information Network the
77 respondent's identifying information and the name, date of birth, sex, and race of each protected person
78 provided to the court. A copy of the preliminary protective order containing any such identifying information
79 shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of
80 protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall
81 forthwith verify and enter any modification as necessary to the identifying information and other appropriate
82 information required by the Department of State Police into the Virginia Criminal Information Network
83 established and maintained by the Department of State Police pursuant to Chapter 2 (§ 52-12 et seq.) of Title
84 52 and the order shall be served forthwith on the allegedly abusing person in person as provided in §
85 16.1-264 and due return made to the court. However, if the order is issued by the circuit court, the clerk of the
86 circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying
87 information and the name, date of birth, sex, and race of each protected person provided to the court to the
88 primary law-enforcement agency providing service and entry of protective orders and upon receipt of the
89 order, the primary law-enforcement agency shall enter the name of the person subject to the order and other
90 appropriate information required by the Department of State Police into the Virginia Criminal Information
91 Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52
92 and the order shall be served forthwith upon the allegedly abusing person in person as provided in § 16.1-264
93 . Upon service, the agency making service shall enter the date and time of service and other appropriate
94 information required by the Department of State Police into the Virginia Criminal Information Network and
95 make due return to the court. The preliminary order shall specify a date for the dispositional hearing. The
96 dispositional hearing shall be scheduled at the time of the hearing pursuant to this section, and shall be held
97 within 60 days of this hearing. If an adjudicatory hearing is requested pursuant to subsection F, the
98 dispositional hearing shall nonetheless be scheduled at the hearing pursuant to this section. All parties present
99 at the hearing shall be given notice of the date and time scheduled for the dispositional hearing; parties who
100 are not present shall be summoned to appear as provided in § 16.1-263.

101 H. Nothing in this section enables the court to remove a child from the custody of his or her parents,
102 guardian, legal custodian or other person standing in loco parentis, except as provided in § 16.1-278.2, and no
103 order hereunder shall be entered against a person over whom the court does not have jurisdiction.

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

109 J. Violation of any order issued pursuant to this section shall be punishable as contempt of court.
110 However, if the violation involves an act or acts of commission or omission that endanger the child's life or
111 health or result in bodily injury to the child, it shall be punishable as a Class 1 misdemeanor.

112 K. The court shall forthwith, but in all cases no later than the end of the business day on which the order
113 was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's
114 identifying information and the name, date of birth, sex, and race of each protected person provided to the
115 court. A copy of the preliminary protective order containing any such identifying information shall be
116 forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective
117 orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify
118 and enter any modification as necessary to the identifying information and other appropriate information
119 required by the Department of State Police into the Virginia Criminal Information Network established and

120 maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served
 121 forthwith on the allegedly abusing person in person as provided in § 16.1-264 and due return made to the
 122 court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward
 123 an attested copy of the order containing the respondent's identifying information and the name, date of birth,
 124 sex, and race of each protected person provided to the court to the primary law-enforcement agency providing
 125 service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency
 126 shall enter the name of the person subject to the order and other appropriate information required by the
 127 Department of State Police into the Virginia Criminal Information Network established and maintained by
 128 the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on
 129 the allegedly abusing person in person as provided in § 16.1-264. Upon service, the agency making service
 130 shall enter the date and time of service and other appropriate information required by the Department of State
 131 Police into the Virginia Criminal Information Network and make due return to the court. The preliminary
 132 order shall specify a date for the full hearing.

133 Upon receipt of the return of service or other proof of service pursuant to subsection C of § 16.1-264, the
 134 clerk shall forthwith forward an attested copy of the preliminary protective order to the primary
 135 law-enforcement agency and the agency shall forthwith verify and enter any modification as necessary into
 136 the Virginia Criminal Information Network as described above. If the order is later dissolved or modified, a
 137 copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary
 138 law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order
 139 by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as
 140 necessary to the identifying information and other appropriate information required by the Department of
 141 State Police into the Virginia Criminal Information Network as described above and the order shall be served
 142 forthwith and due return made to the court.

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

144 **§ 16.1-253.2. Violation of provisions of protective orders; penalty.**

145 A. In addition to any other penalty provided by law, any person who violates any provision of a protective
 146 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 §
 147 20-103, when such violation involves a provision of the protective order that prohibits such person from (i)
 148 going or remaining upon land, buildings, or premises; (ii) further acts of family abuse; or (iii) committing a
 149 criminal offense, or which prohibits contacts by the respondent with the allegedly abused person or family or
 150 household members of the allegedly abused person as the court deems appropriate, is guilty of a Class 1
 151 misdemeanor. The punishment for any person convicted of a second offense of violating a protective order,
 152 when the offense is committed within five years of the prior conviction and when either the instant or prior
 153 offense was based on an act or threat of violence, shall include a mandatory minimum term of confinement of
 154 60 days. Any person convicted of a third or subsequent offense of violating a protective order, when the
 155 offense is committed within 20 years of the first conviction and when either the instant or one of the prior
 156 offenses was based on an act or threat of violence is guilty of a Class 6 felony and the punishment shall
 157 include a mandatory minimum term of confinement of six months. The mandatory minimum terms of
 158 confinement prescribed for violations of this section shall be served consecutively with any other sentence.

159 B. In addition to any other penalty provided by law, any person who, while knowingly armed with a
 160 firearm or other deadly weapon, violates any provision of a protective order with which he has been served
 161 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 §
 162 20-103 is guilty of a Class 6 felony.

163 C. If the respondent commits an assault and battery upon any party protected by the protective order
 164 resulting in bodily injury to the party or stalks any party protected by the protective order in violation of §
 165 18.2-60.3, he is guilty of a Class 6 felony. Any person who violates such a protective order by furtively
 166 entering the home of any protected party while the party is present, or by entering and remaining in the home
 167 of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty
 168 provided by law.

169 D. Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not
 170 specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed
 171 be suspended. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order
 172 pursuant to § 16.1-279.1 for a specified period not exceeding two years from the date of conviction.

173 E. A violation of this section may be prosecuted in the jurisdiction where the protective order was issued,
 174 in any county, city, or town where any act constituting the violation of the protective order occurred, or in the
 175 jurisdiction where the party protected by the protective order resided at the time of such violation.

176 **2. That the provisions of this act may result in a net increase in periods of imprisonment or
 177 commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary
 178 appropriation cannot be determined for periods of imprisonment in state adult correctional facilities;
 179 therefore, Chapter 2 of the Acts of Assembly of 2024, Special Session I, requires the Virginia Criminal
 180 Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the**

181 **Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for**
182 **periods of commitment to the custody of the Department of Juvenile Justice.**