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**HOUSE BILL NO. 2520**  
**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
 (Proposed by the House Committee on Public Safety  
 on \_\_\_\_\_)

(Patron Prior to Substitute—Delegate Cole)

A *BILL to amend and reenact §§ 16.1-253.1 and 19.2-152.9 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 1 of Title 44 an article numbered 2.1, consisting of sections numbered 44-24.2 through 44-24.5, relating to Virginia military forces; Sexual Offense Prevention and Response Program established.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-253.1 and 19.2-152.9 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 1 of Title 44 an article numbered 2.1, consisting of sections numbered 44-24.2 through 44-24.5, as follows:**

**§ 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, or the filing of a written motion requesting a hearing to extend a protective order pursuant to § 16.1-279.1 without alleging that the petitioner is or has been, within a reasonable period of time, subject 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, *evidence of a Military Protective Order issued by a commanding officer in the Armed Forces of the United States, the Virginia National Guard, or the National Guard of any other state in favor of the petitioner or petitioner's family or household members*, or upon the filing of a written motion requesting a hearing to extend a protective order pursuant to § 16.1-279.1 without alleging that the petitioner is or has been, within a reasonable period of time, subject to family abuse. 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. *Any Military Protective Order issued between the parties shall not be admissible or considered as evidence in any hearing on the issuance of a permanent protective order or any extension or renewal thereof.*

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 respondent to restore utility services to such premises.

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 and the password to such 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 or surveil 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 allegedly abusing person; however, no such grant of possession or use shall affect title to the vehicle.

7. Requiring that the allegedly abusing person provide suitable alternative housing for the petitioner and

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60 any other family or household member and, where appropriate, requiring the respondent to pay deposits to  
61 connect or restore necessary utility services in the alternative housing provided.

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

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

66 B. The court shall forthwith, but in all cases no later than the end of the business day on which the order  
67 was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's  
68 identifying information and the name, date of birth, sex, and race of each protected person provided to the  
69 court. A copy of a preliminary protective order containing any such identifying information shall be  
70 forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective  
71 orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify  
72 and enter any modification as necessary to the identifying information and other appropriate information  
73 required by the Department of State Police into the Virginia Criminal Information Network established and  
74 maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served  
75 forthwith on the allegedly abusing person in person as provided in § 16.1-264 and due return made to the  
76 court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward  
77 an attested copy of the order containing the respondent's identifying information and the name, date of birth,  
78 sex, and race of each protected person provided to the court to the primary law-enforcement agency providing  
79 service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency  
80 shall enter the name of the person subject to the order and other appropriate information required by the  
81 Department of State Police into the Virginia Criminal Information Network established and maintained by  
82 the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on  
83 the allegedly abusing person in person as provided in § 16.1-264. Upon service, the agency making service  
84 shall enter the date and time of service and other appropriate information required by the Department of State  
85 Police into the Virginia Criminal Information Network and make due return to the court. The preliminary  
86 order shall specify a date for the full hearing. The hearing shall be held within 15 days of the issuance of the  
87 preliminary order, unless the hearing has been continued pursuant to this subsection or court is closed  
88 pursuant to § 16.1-69.35 or 17.1-207 and such closure prevents the hearing from being held within such time  
89 period, in which case the hearing shall be held on the next day not a Saturday, Sunday, legal holiday, or day  
90 on which the court is lawfully closed. If such court is closed pursuant to § 16.1-69.35 or 17.1-207, the  
91 preliminary protective order shall remain in full force and effect until it is dissolved by such court, until  
92 another preliminary protective order is entered, or until a protective order is entered. If the respondent fails to  
93 appear at this hearing because the respondent was not personally served, or if personally served was  
94 incarcerated and not transported to the hearing, the court may extend the protective order for a period not to  
95 exceed six months. The extended protective order shall be served forthwith on the respondent. However,  
96 where the respondent shows good cause, the court may continue the hearing. The preliminary order shall  
97 remain in effect until the hearing. Upon request after the order is issued, the clerk shall provide the petitioner  
98 with a copy of the order and information regarding the date and time of service. The order shall further  
99 specify that either party may at any time file a motion with the court requesting a hearing to dissolve or  
100 modify the order. The hearing on the motion shall be given precedence on the docket of the court. Upon  
101 petitioner's motion to dissolve the preliminary protective order, a dissolution order may be issued ex parte by  
102 the court with or without a hearing. If an ex parte hearing is held, it shall be heard by the court as soon as  
103 practicable. If a dissolution order is issued ex parte, the court shall serve a copy of such dissolution order on  
104 respondent in conformity with §§ 8.01-286.1 and 8.01-296.

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

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

117 D. In the event that the allegedly abused person is a minor and an emergency protective order was issued  
118 pursuant to § 16.1-253.4 for the protection of such minor and the respondent is a parent, guardian, or person  
119 standing in loco parentis, the attorney for the Commonwealth or a law-enforcement officer may file a petition  
120 on behalf of such minor as his next friend before such emergency protective order expires or within 24 hours

121 of the expiration of such emergency protective order.

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

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

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

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

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

134 J. The respondent may be required to notify the court in writing within seven days of any change of  
135 residence while the preliminary protective order is in effect, provided that the respondent has been served a  
136 copy of such order in accordance with the provisions of this section. Any failure of a respondent to make  
137 such required notification shall be punishable by contempt.

138 **§ 19.2-152.9. Preliminary protective orders.**

139 A. Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable period of  
140 time, subjected to an act of violence, force, or threat, or (ii) a petition or warrant has been issued for the arrest  
141 of the alleged perpetrator for any criminal offense resulting from the commission of an act of violence, force,  
142 or threat, or the filing of a written motion requesting a hearing to extend a protective order pursuant to §  
143 19.2-152.10 without alleging that the petitioner is or has been, within a reasonable period of time, subject to  
144 an act of violence, force, or threat, or that a petition or warrant has been issued for the arrest of the alleged  
145 perpetrator for any criminal offense resulting from the commission of an act of violence, force, or threat, the  
146 court may issue a preliminary protective order against the alleged perpetrator in order to protect the health  
147 and safety of the petitioner or any family or household member of the petitioner. The order may be issued in  
148 an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn  
149 testimony before the judge or intake officer, *evidence of a Military Protective Order issued by a commanding*  
150 *officer in the Armed Forces of the United States, the Virginia National Guard, or the National Guard of any*  
151 *other state in favor of the petitioner or petitioner's family or household members, or upon the filing of a*  
152 *written motion requesting a hearing to extend a protective order pursuant to § 19.2-152.10. If an ex parte*  
153 *order is issued without an affidavit or a completed form as prescribed by subsection D of § 19.2-152.8 being*  
154 *presented, the court, in its order, shall state the basis upon which the order was entered, including a summary*  
155 *of the allegations made and the court's findings. Immediate and present danger of any act of violence, force,*  
156 *or threat or evidence sufficient to establish probable cause that an act of violence, force, or threat has recently*  
157 *occurred shall constitute good cause. Any Military Protective Order issued between the parties shall not be*  
158 *admissible or considered as evidence in any hearing on the issuance of a permanent protective order or any*  
159 *extension or renewal thereof.*

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

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

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

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

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

171 B. The court shall forthwith, but in all cases no later than the end of the business day on which the order  
172 was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's  
173 identifying information and the name, date of birth, sex, and race of each protected person provided to the  
174 court. A copy of a preliminary protective order containing any such identifying information shall be  
175 forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective  
176 orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify  
177 and enter any modification as necessary to the identifying information and other appropriate information  
178 required by the Department of State Police into the Virginia Criminal Information Network established and  
179 maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served  
180 forthwith on the alleged perpetrator in person as provided in § 16.1-264, and due return made to the court.  
181 However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an

182 attested copy of the order containing the respondent's identifying information and the name, date of birth, sex,  
 183 and race of each protected person provided to the court to the primary law-enforcement agency providing  
 184 service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency  
 185 shall enter the name of the person subject to the order and other appropriate information required by the  
 186 Department of State Police into the Virginia Criminal Information Network established and maintained by  
 187 the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on  
 188 the alleged perpetrator in person as provided in § 16.1-264. Upon service, the agency making service shall  
 189 enter the date and time of service and other appropriate information required by the Department of State  
 190 Police into the Virginia Criminal Information Network and make due return to the court. The preliminary  
 191 order shall specify a date for the full hearing. The hearing shall be held within 15 days of the issuance of the  
 192 preliminary order, unless the hearing has been continued pursuant to this subsection or the court is closed  
 193 pursuant to § 16.1-69.35 or 17.1-207 and such closure prevents the hearing from being held within such time  
 194 period, in which case the hearing shall be held on the next day not a Saturday, Sunday, legal holiday, or day  
 195 on which the court is lawfully closed. If such court is closed pursuant to § 16.1-69.35 or 17.1-207, the  
 196 preliminary protective order shall remain in full force and effect until it is dissolved by such court, until  
 197 another preliminary protective order is entered, or until a protective order is entered. If the respondent fails to  
 198 appear at this hearing because the respondent was not personally served, the court may extend the protective  
 199 order for a period not to exceed six months. The extended protective order shall be served as soon as possible  
 200 on the respondent. However, where the respondent shows good cause, the court may continue the hearing.  
 201 The preliminary order shall remain in effect until the hearing. Upon request after the order is issued, the clerk  
 202 shall provide the petitioner with a copy of the order and information regarding the date and time of service.  
 203 The order shall further specify that either party may at any time file a motion with the court requesting a  
 204 hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of  
 205 the court. Upon petitioner's motion to dissolve the preliminary protective order, a dissolution order may be  
 206 issued ex parte by the court with or without a hearing. If an ex parte hearing is held, it shall be heard by the  
 207 court as soon as practicable. If a dissolution order is issued ex parte, the court shall serve a copy of such  
 208 dissolution order on respondent in conformity with §§ 8.01-286.1 and 8.01-296.

209 Upon receipt of the return of service or other proof of service pursuant to subsection C of § 16.1-264, the  
 210 clerk shall forthwith forward an attested copy of the preliminary protective order to primary law-enforcement  
 211 agency and the agency shall forthwith verify and enter any modification as necessary into the Virginia  
 212 Criminal Information Network as described above. If the order is later dissolved or modified, a copy of the  
 213 dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement  
 214 agency responsible for service and entry of protective orders, and upon receipt of the order by the primary  
 215 law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the  
 216 identifying information and other appropriate information required by the Department of State Police into the  
 217 Virginia Criminal Information Network as described above and the order shall be served forthwith and due  
 218 return made to the court.

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

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

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

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

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

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

234 I. The respondent may be required to notify the court in writing within seven days of any change of  
 235 residence while the preliminary protective order is in effect, provided that the respondent has been served a  
 236 copy of such order in accordance with the provisions of this section. Any failure of a respondent to make  
 237 such required notification shall be punishable by contempt.

238 *Article 2.1.*

239 *Sexual Offense Prevention and Response.*

240 **§ 44-24.2. Definitions.**

241 *For the purposes of this article, unless the context requires a different meaning:*

242 *"Criminal sexual assault" means a violation of any offense enumerated in Article 7 (§ 18.2-61 et seq.) of*

243 Chapter 4 of Title 18.2.

244 "Department" means the Department of Military Affairs established pursuant to § 44-11.

245 "Virginia military protective order" means a protective order issued by the Officer on behalf of a victim of  
246 an offense of criminal sexual assault in response to a restricted report or an unrestricted report made (i) by a  
247 member of the Virginia military forces or (ii) against a member of the Virginia military forces.

248 "Officer" means the Sexual Offense Prevention and Response Officer.

249 "Program" means the Sexual Offense Prevention and Response Program.

250 "Restricted report" means a reporting option in which the victim of criminal sexual assault may  
251 confidentially, and without initiating an investigation, disclose such offense to the Officer so that such victim  
252 may receive emergency care, medical treatment, and counseling. Such restricted report shall not be referred  
253 to law enforcement without the victim's consent.

254 "Unrestricted report" means a reporting option in which the victim of criminal sexual assault may  
255 disclose, without requesting confidentiality or a restricted report, such offense to the Officer.

256 "Virginia military forces" means the Virginia National Guard, which shall include the Virginia Army  
257 National Guard and the Virginia Air National Guard, and the Virginia Defense Force.

258 **§ 44-24.3. Sexual Offense Prevention and Response Program created; Sexual Offense Prevention and**  
259 **Response Officer.**

260 A. There is created within the Department of Military Affairs the Sexual Offense Prevention and Response  
261 Program and there is established within the Program a Sexual Offense Prevention and Response Officer. The  
262 Program and Officer shall exercise the authority granted by this article independently from the chain of  
263 command within the Department.

264 B. The Officer shall:

265 1. Perform victim advocacy services for victims of criminal sexual assault, including helping victims to  
266 understand the available reporting options and to receive the appropriate medical treatment and counseling;

267 2. Accept reports for alleged criminal sexual assault made (i) by a person who is a member of the Virginia  
268 military forces or (ii) against a person who is a member of the Virginia military forces;

269 3. Provide any victim who makes a report pursuant to this section with information regarding  
270 compensation for victims of crime pursuant to Chapter 21.1 (§ 19.2-368.1 et seq.) of Title 19.2; and

271 4. Upon the request and with the consent of a victim of a criminal sexual assault who has made a  
272 restricted report or unrestricted report, file a petition for a protective order on behalf of such victim  
273 consistent with the provisions of §§ 16.1-253.1, 16.1-253.4, and 16.1-279.1 and Chapter 9.1 (§ 19.2-152.7:1  
274 et seq.) of Title 19.2.

275 C. A victim of criminal sexual assault who is a member of the Virginia military forces shall be able to (i)  
276 file with the Officer either a restricted or an unrestricted report and, if such victim files a restricted report, be  
277 allowed to change such restricted report to an unrestricted report at any time; (ii) participate in the U.S.  
278 Department of Defense Catch a Serial Offender program; and (iii) receive notice when the Officer is made  
279 aware that the accused person has been subsequently accused of an offense of criminal sexual assault by a  
280 member of the Virginia military forces or any other person.

281 **§ 44-24.4. Investigation of unrestricted reports.**

282 A. Upon the filing of an unrestricted report, the Officer shall refer such unrestricted report to the State  
283 Police or to a local law-enforcement agency, whichever is appropriate, for the initial collection of evidence.

284 B. A local law-enforcement agency responsible for such initial collection of evidence in accordance with  
285 subsection A shall provide to the State Police, upon request of the State Police, any such evidence collected  
286 or other information relevant to the unrestricted report.

287 **§ 44-24.5. Annual report.**

288 A. The Adjutant General, in coordination with the Officer, shall submit a report regarding the Program  
289 annually to the Governor, the Lieutenant Governor, the Speaker of the House of Delegates, and the chairmen  
290 of both the House and Senate Committees for Courts of Justice.

291 B. Using data collected by the Officer, the annual report shall include:

292 1. The policies and procedures of the Program implemented by the Officer and the Adjutant General  
293 designed to prevent and respond to criminal sexual assault incidents, including procedures for making and  
294 filing restricted and unrestricted reports;

295 2. An assessment of the implementation and effectiveness of such policies and procedures, including  
296 oversight of and the Commonwealth's response to restricted and unrestricted reports;

297 3. An analysis of the number of reports of criminal sexual assault offenses involving members of the  
298 Virginia military forces; and

299 4. Any areas of improvement or deficiencies in the Department's training of the Officer.

300 C. Any information included in the annual report regarding a restricted report shall be limited to  
301 aggregated statistical data and shall not include any identifying information. Any information in the annual  
302 report regarding unrestricted reports shall include:

303 1. Types of criminal sexual assault offenses reported;

304 2. Information relating to victims and persons accused;

- 305**        *3. The status of investigations and prosecutions initiated in accordance with this article; and*
- 306**        *4. The status of any administrative action taken by the Department against members of Virginia military*
- 307**        *forces who are on state active duty pursuant to § 44-75.1.*