

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 16.1-253.1, 16.1-253.2, 18.2-60.4, and 19.2-152.9 of the Code of Virginia, relating to protective orders; Military Protective Orders.

[H 1882]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.1, 16.1-253.2, 18.2-60.4, and 19.2-152.9 of the Code of Virginia are amended and reenacted 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, *upon 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 only be admissible or considered as evidence in accordance with the Code of Virginia, the Rules of Evidence of the Supreme Court of Virginia, or relevant Virginia case law.*

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 surveille 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 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.

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

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

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

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

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

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

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

F. 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.

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

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

I. Upon issuance of a preliminary 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.

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

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

A. In addition to any other penalty provided by law, any person who violates any provision of a protective order issued pursuant to § 16.1-253.1, 16.1-253.4, 16.1-278.14, or 16.1-279.1 or subsection B of § 20-103, when such violation involves a provision of the protective order that prohibits such person from (i) going or remaining upon land, buildings, or premises; (ii) further acts of family abuse; or (iii) committing a criminal offense, or which prohibits contacts by the respondent with the allegedly abused person or family or household members of the allegedly abused person as the court deems appropriate, is guilty of a Class 1 misdemeanor. The punishment for any person convicted of a second offense of violating a protective order, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, shall include a mandatory minimum term of confinement of 60 days. Any person convicted of a third or subsequent offense of violating a protective order, when the offense is committed within 20 years of the first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence is guilty of a Class 6 felony and the punishment shall include a mandatory minimum term of confinement of six months. The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence.

B. In addition to any other penalty provided by law, any person who, while knowingly armed with a firearm or other deadly weapon, violates any provision of a protective order with which he has been served issued pursuant to § 16.1-253.1, 16.1-253.4, 16.1-278.14, or 16.1-279.1 or subsection B of § 20-103 is guilty of a Class 6 felony.

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

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

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

F. Upon a violation of this section, if 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 against a person under such officer's command and registered in the National Crime Information Center (NCIC) has been issued against the same defendant, the law-enforcement officer or agency shall inform the military law-enforcement officer or agency that entered the Military Protective Order into the NCIC or the commanding officer who issued the Military Protective Order of such violation telephonically, in writing, via email, via text, or by any other routine means of interagency communication.

§ 18.2-60.4. Violation of protective orders; penalty.

A. Any person who violates any provision of a protective order issued pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 is guilty of a Class 1 misdemeanor. Conviction hereunder shall bar a finding of contempt for the same act. The punishment for any person convicted of a second offense of violating a protective order, other than a protective order issued pursuant to subsection C of § 19.2-152.10, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, shall include a mandatory minimum term of confinement of 60 days. Any person convicted of a third or subsequent offense of violating a protective order, other than a protective order issued pursuant to subsection C of § 19.2-152.10, when the offense is committed within 20 years of the

first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence, is guilty of a Class 6 felony and the punishment shall include a mandatory minimum term of confinement of six months. The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence.

B. In addition to any other penalty provided by law, any person who, while knowingly armed with a firearm or other deadly weapon, violates any provision of a protective order with which he has been served issued pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, other than a protective order issued pursuant to subsection C of § 19.2-152.10, is guilty of a Class 6 felony.

C. If the respondent commits an assault and battery upon any party protected by the protective order, other than a protective order issued pursuant to subsection C of § 19.2-152.10, resulting in bodily injury to the party or stalks any party protected by the protective order in violation of § 18.2-60.3, he is guilty of a Class 6 felony. Any person who violates such a protective order, other than a protective order issued pursuant to subsection C of § 19.2-152.10, by furtively entering the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty provided by law.

D. Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended.

E. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § 19.2-152.10 for a specified period not exceeding two years from the date of conviction.

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

G. Upon a violation of this section, if 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 against a person under such officer's command and registered in the National Crime Information Center (NCIC) has been issued against the same defendant, the law-enforcement officer or agency shall inform the military law-enforcement officer or agency that entered the Military Protective Order into the NCIC or the commanding officer who issued the Military Protective Order of such violation telephonically, in writing, via email, via text, or by any other routine means of interagency communication.

§ 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, or the filing of a written motion requesting a hearing to extend a protective order pursuant to § 19.2-152.10 without alleging that the petitioner is or has been, within a reasonable period of time, subject to an act of violence, force, or threat, or that 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, *upon 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 § 19.2-152.10. 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. *Any Military Protective Order issued between the parties shall only be admissible or considered as evidence in accordance with the Code of Virginia, the Rules of Evidence of the Supreme Court of Virginia, or relevant Virginia case law.*

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 hearing has been continued pursuant to this subsection or 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 such court is closed pursuant to § 16.1-69.35 or 17.1-207, the preliminary protective order shall remain in full force and effect until it is dissolved by such court, until another preliminary protective order is entered, or until a protective order is entered. If the respondent fails to appear at this hearing because the respondent was not personally served, the court may extend the protective order for a period not to exceed six months. The extended protective order shall be served as soon as possible on the respondent. However, where the respondent shows good cause, the court may continue the hearing. The preliminary order shall remain in effect until the hearing. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of the order and information regarding the date and time of service. The order shall further specify that either party may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court. Upon petitioner's motion to dissolve the preliminary 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.

Upon receipt of the return of service or other proof of service pursuant to subsection C of § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to primary law-enforcement agency and the agency shall forthwith verify and enter any modification as necessary into the Virginia Criminal Information Network as described above. 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.

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

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

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

F. 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.

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

H. Upon issuance of a preliminary protective order, the clerk of the court shall make available to the

305 petitioner information that is published by the Department of Criminal Justice Services for victims of
306 domestic violence or for petitioners in protective order cases.

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