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SENATE BILL NO. 616
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee for Courts of Justice
on _____)
(Patron Prior to Substitute—Senator Mulchi)

A BILL to amend and reenact §§ 16.1-253.4 and 19.2-152.8 of the Code of Virginia, relating to emergency protective orders; duration.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.4 and 19.2-152.8 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-253.4. Emergency protective orders authorized in certain cases; penalty.

A. Any judge of a circuit court, general district court, juvenile and domestic relations district court, or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person.

B. When a law-enforcement officer or an allegedly abused person asserts under oath to a judge or magistrate, and on that assertion or other evidence the judge or magistrate (i) finds that a warrant for a violation of § 18.2-57.2 has been issued or issues a warrant for violation of § 18.2-57.2 and finds that there is probable danger of further acts of family abuse against a family or household member by the respondent or (ii) finds that reasonable grounds exist to believe that the respondent has committed family abuse and there is probable danger of a further such offense against a family or household member by the respondent, the judge or magistrate shall issue an ex parte emergency protective order, except if the respondent is a minor, an emergency protective order shall not be required, imposing one or more of the following conditions 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 allegedly abused person or family or household members of the allegedly abused person, including prohibiting the respondent from being in the physical presence of the allegedly abused person or family or household members of the allegedly abused person, as the judge or magistrate deems necessary to protect the safety of such persons;
- 3. Granting the family or household member possession of the premises 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; and
- 4. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such

32 petitioner meets the definition of owner in § 3.2-6500.

33 In addition, if the respondent is a juvenile, the court may, upon its own motion or upon the motion of the
34 attorney or guardian ad litem representing the respondent, enter an order requiring the local board of social
35 services to provide services to the child and family.

36 When the judge or magistrate considers the issuance of an emergency protective order pursuant to clause
37 (i), he shall presume that there is probable danger of further acts of family abuse against a family or
38 household member by the respondent unless the presumption is rebutted by the allegedly abused person.

39 C. An emergency protective order issued pursuant to this section shall expire at 11:59 p.m. on the third
40 day following issuance. If the expiration occurs on a day that the court is not in session, the emergency
41 protective order shall be extended until 11:59 p.m. on the next day that the juvenile and domestic relations
42 district court is in session. *However, if a warrant or petition for a criminal offense related to an active*
43 *emergency protective order has been issued, the court shall extend such emergency protective order until the*
44 *first hearing on the related criminal offense.*

45 When issuing an emergency protective order under this section, the judge or magistrate shall provide the
46 protected person or the law-enforcement officer seeking the emergency protective order with the form for use
47 in filing petitions pursuant to § 16.1-253.1 and written information regarding protective orders that shall
48 include the telephone numbers of domestic violence agencies and legal referral sources on a form prepared by
49 the Supreme Court. If these forms are provided to a law-enforcement officer, the officer may provide these
50 forms to the protected person when giving the emergency protective order to the protected person. The
51 respondent may at any time file a motion with the court requesting a hearing to dissolve or modify the order
52 issued hereunder. The hearing on the motion shall be given precedence on the docket of the court.

53 D. A law-enforcement officer may request an emergency protective order pursuant to this section and, if
54 the person in need of protection is physically or mentally incapable of filing a petition pursuant to
55 § 16.1-253.1 or 16.1-279.1, may request the extension of an emergency protective order for an additional
56 period of time not to exceed two weeks after expiration of the original order. The request for an emergency
57 protective order or extension of an order may be made orally, in person or by electronic means, and the judge
58 of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate may
59 issue an oral emergency protective order. An oral emergency protective order issued pursuant to this section
60 shall be reduced to writing, by the law-enforcement officer requesting the order or the magistrate on a
61 preprinted form approved and provided by the Supreme Court of Virginia. The completed form shall include
62 a statement of the grounds for the order asserted by the officer or the allegedly abused person.

63 E. The court or magistrate shall forthwith, but in all cases no later than the end of the business day on
64 which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network
65 (*VCIN*), *established and maintained by the Department of State Police pursuant to Chapter 2 (§ 52-12 et*
66 *seq.) of Title 52*, the respondent's identifying information and the name, date of birth, sex, and race of each
67 protected person provided to the court or magistrate. A copy of an emergency protective order issued
68 pursuant to this section containing any such identifying information shall be forwarded forthwith to the
69 primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the
70 order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as
71 necessary to the identifying information and other appropriate information required by the Department of
72 State Police into the ~~Virginia Criminal Information Network established and maintained by the Department~~
73 ~~pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52~~ *VCIN* and the order shall be served forthwith upon the
74 respondent and due return made to the court. However, if the order is issued by the circuit court, the clerk of
75 the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying
76 information and the name, date of birth, sex, and race of each protected person provided to the court to the
77 primary law-enforcement agency providing service and entry of protective orders and upon receipt of the
78 order, the primary law-enforcement agency shall enter the name of the person subject to the order and other
79 appropriate information required by the Department of State Police into ~~the Virginia Criminal Network~~
80 ~~established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52~~ *VCIN* and
81 the order shall be served forthwith on the respondent. Upon service, the agency making service shall enter the
82 date and time of service and other appropriate information required by the Department of State Police into ~~the~~
83 ~~Virginia Criminal Information Network~~ *VCIN* and make due return to the court. One copy of the order shall
84 be given to the allegedly abused person when it is issued, and one copy shall be filed with the written report
85 required by subsection D of § 19.2-81.3. The judge or magistrate who issues an oral order pursuant to an
86 electronic request by a law-enforcement officer shall verify the written order to determine whether the officer
87 who reduced it to writing accurately transcribed the contents of the oral order. The original copy shall be filed
88 with the clerk of the juvenile and domestic relations district court within five business days of the issuance of
89 the order. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also
90 be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of
91 protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall
92 forthwith verify and enter any modification as necessary to the identifying information and other appropriate
93 information required by the Department of State Police into ~~the Virginia Criminal Information Network~~

94 *VCIN* as described above and the order shall be served forthwith and due return made to the court. Upon
95 request, the clerk shall provide the allegedly abused person with information regarding the date and time of
96 service.

97 F. The availability of an emergency protective order shall not be affected by the fact that the family or
98 household member left the premises to avoid the danger of family abuse by the respondent.

99 G. The issuance of an emergency protective order shall not be considered evidence of any wrongdoing by
100 the respondent.

101 H. As used in this section, "law-enforcement officer" means (i) any full-time or part-time employee of a
102 police department or sheriff's office which is part of or administered by the Commonwealth or any political
103 subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of
104 the penal, traffic, or highway laws of the Commonwealth; (ii) any member of an auxiliary police force
105 established pursuant to § 15.2-1731; and (iii) any special conservator of the peace who meets the certification
106 requirements for a law-enforcement officer as set forth in § 15.2-1706. Part-time employees are compensated
107 officers who are not full-time employees as defined by the employing police department or sheriff's office.

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

113 J. As used in this section:

114 "Copy" includes a facsimile copy.

115 "Physical presence" includes (i) intentionally maintaining direct visual contact with the petitioner or (ii)
116 unreasonably being within 100 feet from the petitioner's residence or place of employment.

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

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

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

123 **§ 19.2-152.8. Emergency protective orders authorized.**

124 A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or
125 magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to
126 protect the health or safety of any person.

127 B. When a law-enforcement officer or an alleged victim asserts under oath to a judge or magistrate that
128 such person is being or has been subjected to an act of violence, force, or threat and on that assertion or other
129 evidence the judge or magistrate finds that (i) there is probable danger of a further such act being committed
130 by the respondent against the alleged victim or (ii) a petition or warrant for the arrest of the respondent has
131 been issued for any criminal offense resulting from the commission of an act of violence, force, or threat, the
132 judge or magistrate shall issue an ex parte emergency protective order imposing one or more of the following
133 conditions on the respondent:

134 1. Prohibiting acts of violence, force, or threat or criminal offenses resulting in injury to person or
135 property;

136 2. Prohibiting such contacts by the respondent with the alleged victim or the alleged victim's family or
137 household members, including prohibiting the respondent from being in the physical presence of the alleged
138 victim or the alleged victim's family or household members, as the judge or magistrate deems necessary to
139 protect the safety of such persons;

140 3. Such other conditions as the judge or magistrate deems necessary to prevent (i) acts of violence, force,
141 or threat, (ii) criminal offenses resulting in injury to person or property, or (iii) communication or other
142 contact of any kind by the respondent; and

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

145 In addition, if the respondent is a juvenile, the court may, upon its own motion or upon the motion of the
146 attorney or guardian ad litem representing the respondent, enter an order requiring the local board of social
147 services to provide services to the child and family.

148 C. An emergency protective order issued pursuant to this section shall expire at 11:59 p.m. on the third
149 day following issuance. If the expiration occurs on a day that the court is not in session, the emergency
150 protective order shall be extended until 11:59 p.m. on the next day that the court which issued the order is in
151 session. *However, if a warrant or petition for a criminal offense related to an active emergency protective*
152 *order has been issued, the court shall extend such emergency protective order until the first hearing on the*
153 *related criminal offense.* The respondent may at any time file a motion with the court requesting a hearing to

154 dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.

155 D. A law-enforcement officer may request an emergency protective order pursuant to this section and, if
156 the person in need of protection is physically or mentally incapable of filing a petition pursuant to
157 § 19.2-152.9 or 19.2-152.10, may request the extension of an emergency protective order for an additional
158 period of time not to exceed two weeks after expiration of the original order. The request for an emergency
159 protective order or extension of an order may be made orally, in person or by electronic means, and the judge
160 of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate may
161 issue an oral emergency protective order. An oral emergency protective order issued pursuant to this section
162 shall be reduced to writing, by the law-enforcement officer requesting the order or the magistrate, on a
163 preprinted form approved and provided by the Supreme Court of Virginia. The completed form shall include
164 a statement of the grounds for the order asserted by the officer or the alleged victim of such crime.

165 E. The court or magistrate shall forthwith, but in all cases no later than the end of the business day on
166 which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network
167 (*VCIN*), *established and maintained by the Department of State Police pursuant to Chapter 2 (§ 52-12 et*
168 *seq.) of Title 52*, the respondent's identifying information and the name, date of birth, sex, and race of each
169 protected person provided to the court or magistrate. A copy of an emergency protective order issued
170 pursuant to this section containing any such identifying information shall be forwarded forthwith to the
171 primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the
172 order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as
173 necessary to the identifying information and other appropriate information required by the Department of
174 State Police into the ~~Virginia Criminal Information Network established and maintained by the Department~~
175 ~~pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52~~ *VCIN* and the order shall be served forthwith upon the
176 respondent and due return made to the court. However, if the order is issued by the circuit court, the clerk of
177 the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying
178 information and the name, date of birth, sex, and race of each protected person provided to the court to the
179 primary law-enforcement agency providing service and entry of protective orders and upon receipt of the
180 order, the primary law-enforcement agency shall enter the name of the person subject to the order and other
181 appropriate information required by the Department of State Police into ~~the Virginia Criminal Information~~
182 ~~Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52~~
183 *VCIN* and the order shall be served forthwith upon the respondent. Upon service, the agency making service
184 shall enter the date and time of service and other appropriate information required into ~~the Virginia Criminal~~

185 ~~Information Network~~ *VCIN* and make due return to the court. One copy of the order shall be given to the
186 alleged victim of such crime. The judge or magistrate who issues an oral order pursuant to an electronic
187 request by a law-enforcement officer shall verify the written order to determine whether the officer who
188 reduced it to writing accurately transcribed the contents of the oral order. The original copy shall be filed with
189 the clerk of the appropriate district court within five business days of the issuance of the order. If the order is
190 later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded
191 forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and
192 upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter
193 any modification as necessary to the identifying information and other appropriate information required by
194 the Department of State Police into ~~the Virginia Criminal Information Network~~ *VCIN* as described above and
195 the order shall be served forthwith and due return made to the court. Upon request, the clerk shall provide the
196 alleged victim of such crime with information regarding the date and time of service.

197 F. The issuance of an emergency protective order shall not be considered evidence of any wrongdoing by
198 the respondent.

199 G. As used in this section, a "law-enforcement officer" means any (i) person who is a full-time or
200 part-time employee of a police department or sheriff's office which is part of or administered by the
201 Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection
202 of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth and (ii) member of
203 an auxiliary police force established pursuant to § 15.2-1731. Part-time employees are compensated officers
204 who are not full-time employees as defined by the employing police department or sheriff's office.

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

210 I. As used in this section:

211 "Copy" includes a facsimile copy.

212 "Physical presence" includes (i) intentionally maintaining direct visual contact with the petitioner or (ii)
213 unreasonably being within 100 feet from the petitioner's residence or place of employment.

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

215 K. No emergency protective order shall be issued pursuant to this section against a law-enforcement
216 officer for any action arising out of the lawful performance of his duties.

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