

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

HOUSE BILL NO. 1363
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee for Courts of Justice
on _____)
(Patron Prior to Substitute—Delegate Dougherty)

A BILL to amend and reenact § 16.1-279.1 of the Code of Virginia, relating to family abuse protective orders; conditions imposed upon issuance.

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-279.1 of the Code of Virginia is amended and reenacted as follows:

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

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

1. Prohibiting acts of family abuse or criminal offenses that result in injury to person or property;

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

3. Granting the petitioner possession of the residence occupied by the parties to the exclusion of the respondent *and ordering the respondent to pay for the rent or mortgage on such residence*; however, no such grant of possession shall affect title to any real or personal property;

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

5. Granting the petitioner and, where appropriate, any other family or household member of the petitioner, exclusive use and possession of a cellular telephone number or electronic device 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 respondent and enjoining the respondent from terminating

32 any insurance, registration, or taxes on the motor vehicle and directing the respondent to maintain the
33 insurance, registration, and taxes, as appropriate; however, no such grant of possession or use shall affect title
34 to the vehicle;

35 7. Requiring that the respondent provide *and maintain* suitable alternative housing for the petitioner and,
36 if appropriate, any other family or household member and where appropriate, requiring the respondent to pay
37 deposits to connect or restore necessary utility services in the alternative housing provided;

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

40 9. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such
41 petitioner meets the definition of owner in § 3.2-6500; and

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

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

47 A1. If a protective order is issued pursuant to subsection A, the court may also issue a temporary child
48 support order for the support of any children of the petitioner whom the respondent has a legal obligation to
49 support. Such temporary child support order shall terminate upon the determination of support pursuant to
50 § 20-108.1 or upon the termination of such protective order, whichever occurs first.

51 B. 1. The protective order may be issued for a specified period of time up to a maximum of two years.
52 However, if the court finds, based upon evidence presented, that the respondent has been subject to a
53 previous order issued within 10 years pursuant to this section, the protective order may be issued for a
54 specified period of time up to a maximum of four years. The protective order shall expire at 11:59 p.m. on the
55 last day specified or at 11:59 p.m. on the last day of the two-year or four-year period if no date is specified.
56 Prior to the expiration of the protective order, a petitioner may file a written motion requesting a hearing to
57 extend the order. Proceedings to extend a protective order shall be given precedence on the docket of the
58 court. A written motion requesting a hearing to extend the protective order shall be served as soon as possible
59 on the respondent.

60 If the petitioner was a family or household member of the respondent at the time the initial protective

61 order was issued, the court may extend the protective order for a period not longer than two years, regardless
62 of whether such order was initially issued for a period of time up to a maximum of two years or four years, to
63 protect the health and safety of the petitioner or persons who are family or household members of the
64 petitioner at the time the request for an extension is made. The extension of the protective order shall expire
65 at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is
66 specified. Nothing herein shall limit the number of extensions that may be requested or issued.

67 2. Upon the filing of a written motion requesting a hearing to extend the protective order, the court may
68 issue an ex parte preliminary protective order pursuant to § 16.1-253.1 until the extension hearing. The ex
69 parte preliminary protective order shall specify a date for the extension hearing, which shall be held within 15
70 days of the issuance of the ex parte preliminary protective order and may be held after the expiration of the
71 protective order. If the respondent fails to appear at the extension hearing because the respondent was not
72 personally served, the court shall schedule a new date for the extension hearing and may extend the ex parte
73 preliminary protective order until such new date. The extended ex parte preliminary protective order shall be
74 served as soon as possible on the respondent. If the respondent was personally served, where the petitioner
75 shows by clear and convincing evidence that a continuance is necessary to meet the ends of justice or the
76 respondent shows good cause, the court may continue the extension hearing and such ex parte preliminary
77 protective order shall remain in effect until the extension hearing.

78 C. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon
79 as possible. The court, including a circuit court if the circuit court issued the order, shall forthwith, but in all
80 cases no later than the end of the business day on which the order was issued, enter and transfer electronically
81 to the Virginia Criminal Information Network the respondent's identifying information and the name, date of
82 birth, sex, and race of each protected person provided to the court and shall forthwith forward the attested
83 copy of the protective order containing any such identifying information to the primary law-enforcement
84 agency responsible for service and entry of protective orders. Upon receipt of the order by the primary
85 law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the
86 identifying information and other appropriate information required by the Department of State Police into the
87 Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2
88 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made
89 to the court. Upon service, the agency making service shall enter the date and time of service and other
90 appropriate information required by the Department of State Police into the Virginia Criminal Information
91 Network and make due return to the court. If the order is later dissolved or modified, a copy of the dissolution

92 or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency
93 responsible for service and entry of protective orders, and upon receipt of the order by the primary
94 law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the
95 identifying information and other appropriate information required by the Department of State Police into the
96 Virginia Criminal Information Network as described above and the order shall be served forthwith and due
97 return made to the court.

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

100 E. The court may assess costs and attorney fees against either party regardless of whether an order of
101 protection has been issued as a result of a full hearing.

102 F. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate
103 jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the
104 District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or
105 threatening acts or harassment against or contact or communication with or physical proximity to another
106 person, including any of the conditions specified in subsection A, shall be accorded full faith and credit and
107 enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and
108 opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought
109 to be enforced sufficient to protect such person's due process rights and consistent with federal law. A person
110 entitled to protection under such a foreign order may file the order in any juvenile and domestic relations
111 district court by filing with the court an attested or exemplified copy of the order. Upon such a filing, the
112 clerk shall forthwith forward an attested copy of the order to the primary law-enforcement agency responsible
113 for service and entry of protective orders which shall, upon receipt, enter the name of the person subject to
114 the order and other appropriate information required by the Department of State Police into the Virginia
115 Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12
116 et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia
117 Criminal Information Network.

118 Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy
119 available of any foreign order filed with that court. A law-enforcement officer may, in the performance of his
120 duties, rely upon a copy of a foreign protective order or other suitable evidence which has been provided to
121 him by any source and may also rely upon the statement of any person protected by the order that the order

122 remains in effect.

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

129 H. As used in this section:

130 "Copy" includes a facsimile copy.

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

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

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

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

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

143 M. The respondent shall be required to notify the court in writing within seven days of any change of
144 residence while the protective order is in effect, provided that the respondent has been served a copy of such
145 order in accordance with the provisions of this section. A violation of this subsection shall be punishable by
146 contempt.