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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; however, no such grant of possession shall affect title to any real or personal property. *The court may require the respondent to pay rent or mortgage on the residence to which the petitioner was granted possession;*

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

7. Requiring that the respondent provide *and maintain* suitable alternative housing for the petitioner and, if appropriate, 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;

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

9. 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; and

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

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

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

B. 1. The protective order may be issued for a specified period of time up to a maximum of two years. However, if the court finds, based upon evidence presented, that the respondent has been subject to a previous order issued within 10 years pursuant to this section, the protective order may be issued for a specified period of time up to a maximum of four years. The protective order shall expire at 11:59 p.m. on the 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. Prior to the expiration of the protective order, a petitioner may file a written motion requesting a hearing to extend the order. Proceedings to extend a protective order shall be given precedence on the docket of the court. A written motion requesting a hearing to extend the protective order shall be served as soon as possible

60 on the respondent.

61 If the petitioner was a family or household member of the respondent at the time the initial protective
62 order was issued, the court may extend the protective order for a period not longer than two years, regardless
63 of whether such order was initially issued for a period of time up to a maximum of two years or four years, to
64 protect the health and safety of the petitioner or persons who are family or household members of the
65 petitioner at the time the request for an extension is made. The extension of the protective order shall expire
66 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
67 specified. Nothing herein shall limit the number of extensions that may be requested or issued.

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

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

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

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

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

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

122 him by any source and may also rely upon the statement of any person protected by the order that the order
123 remains in effect.

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

130 H. As used in this section:

131 "Copy" includes a facsimile copy.

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

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

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

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

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

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