

SUBCOMMITTEE: SUBCOMMITTEE #2

HOUSE BILL NO. 262

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for _____

on _____)

(Patron Prior to Substitute--Delegate Miyares)

A BILL to amend and reenact §§ 16.1-253.1 and 16.1-279.1 of the Code of Virginia, relating to protective orders; family abuse; cellular telephone number or other electronic device.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.1 and 16.1-279.1 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, 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. Immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred shall constitute good cause. 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:

- 27 1. Prohibiting acts of family abuse or criminal offenses that result in injury to person or property.
- 28 2. Prohibiting such contacts by the respondent with the petitioner or family or household members
29 of the petitioner as the court deems necessary for the health or safety of such persons.
- 30 3. Granting the petitioner possession of the premises occupied by the parties to the exclusion of
31 the allegedly abusing person; however, no such grant of possession shall affect title to any real or personal
32 property.
- 33 4. Enjoining the respondent from terminating any necessary utility service to a premises that the
34 petitioner has been granted possession of pursuant to subdivision 3 or, where appropriate, ordering the
35 respondent to restore utility services to such premises.
- 36 5. Granting the petitioner and, where appropriate, any other family or household member of the
37 petitioner, exclusive use and possession of a cellular telephone number or electronic device. The court
38 may enjoin the respondent from terminating a cellular telephone number or electronic device before the
39 expiration of the contract term with a third-party provider. The court may enjoin the respondent from
40 using a cellular telephone or other electronic device to locate the petitioner.
- 41 6. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner
42 alone or jointly owned by the parties to the exclusion of the allegedly abusing person; however, no such
43 grant of possession or use shall affect title to the vehicle.
- 44 ~~6-7.~~ Requiring that the allegedly abusing person provide suitable alternative housing for the
45 petitioner and any other family or household member and, where appropriate, requiring the respondent to
46 pay deposits to connect or restore necessary utility services in the alternative housing provided.
- 47 ~~7-8.~~ Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if
48 such petitioner meets the definition of owner in § 3.2-6500.
- 49 ~~8-9.~~ Any other relief necessary for the protection of the petitioner and family or household
50 members of the petitioner.
- 51 B. The court shall forthwith, but in all cases no later than the end of the business day on which the
52 order was issued, enter and transfer electronically to the Virginia Criminal Information Network the
53 respondent's identifying information and the name, date of birth, sex, and race of each protected person

54 provided to the court. A copy of a preliminary protective order containing any such identifying information
55 shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of
56 protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall
57 forthwith verify and enter any modification as necessary to the identifying information and other
58 appropriate information required by the Department of State Police into the Virginia Criminal Information
59 Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52
60 and the order shall be served forthwith on the allegedly abusing person in person as provided in § 16.1-
61 264 and due return made to the court. However, if the order is issued by the circuit court, the clerk of the
62 circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying
63 information and the name, date of birth, sex, and race of each protected person provided to the court to
64 the primary law-enforcement agency providing service and entry of protective orders and upon receipt of
65 the order, the primary law-enforcement agency shall enter the name of the person subject to the order and
66 other appropriate information required by the Department of State Police into the Virginia Criminal
67 Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et
68 seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as
69 provided in § 16.1-264. Upon service, the agency making service shall enter the date and time of service
70 and other appropriate information required by the Department of State Police into the Virginia Criminal
71 Information Network and make due return to the court. The preliminary order shall specify a date for the
72 full hearing. The hearing shall be held within 15 days of the issuance of the preliminary order. If the
73 respondent fails to appear at this hearing because the respondent was not personally served, or if personally
74 served was incarcerated and not transported to the hearing, the court may extend the protective order for
75 a period not to exceed six months. The extended protective order shall be served forthwith on the
76 respondent. However, upon motion of the respondent and for good cause shown, the court may continue
77 the hearing. The preliminary order shall remain in effect until the hearing. Upon request after the order is
78 issued, the clerk shall provide the petitioner with a copy of the order and information regarding the date
79 and time of service. The order shall further specify that either party may at any time file a motion with the

80 court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given
81 precedence on the docket of the court.

82 Upon receipt of the return of service or other proof of service pursuant to subsection C of § 16.1-
83 264, the clerk shall forthwith forward an attested copy of the preliminary protective order to the primary
84 law-enforcement agency, and the agency shall forthwith verify and enter any modification as necessary
85 into the Virginia Criminal Information Network as described above. If the order is later dissolved or
86 modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the
87 primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt
88 of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any
89 modification as necessary to the identifying information and other appropriate information required by the
90 Department of State Police into the Virginia Criminal Information Network as described above and the
91 order shall be served forthwith and due return made to the court.

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

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

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

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

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

104 **§ 16.1-279.1. Protective order in cases of family abuse.**

105 A. In cases of family abuse, including any case involving an incarcerated or recently incarcerated
106 respondent against whom a preliminary protective order has been issued pursuant to § 16.1-253.1, the

107 court may issue a protective order to protect the health and safety of the petitioner and family or household
108 members of the petitioner. A protective order issued under this section may include any one or more of
109 the following conditions to be imposed on the respondent:

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

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

113 3. Granting the petitioner possession of the residence occupied by the parties to the exclusion of
114 the respondent; however, no such grant of possession shall affect title to any real or personal property;

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

118 5. Granting the petitioner and, where appropriate, any other family or household member of the
119 petitioner, exclusive use and possession of a cellular telephone number or electronic device. The court
120 may enjoin the respondent from terminating a cellular telephone number or electronic device before the
121 expiration of the contract term with a third-party provider. The court may enjoin the respondent from
122 using a cellular telephone or other electronic device to locate the petitioner;

123 6. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner
124 alone or jointly owned by the parties to the exclusion of the respondent and enjoining the respondent from
125 terminating any insurance, registration, or taxes on the motor vehicle and directing the respondent to
126 maintain the insurance, registration, and taxes, as appropriate; however, no such grant of possession or
127 use shall affect title to the vehicle;

128 ~~6-7.~~ Requiring that the respondent provide suitable alternative housing for the petitioner and, if
129 appropriate, any other family or household member and where appropriate, requiring the respondent to
130 pay deposits to connect or restore necessary utility services in the alternative housing provided;

131 ~~7-8.~~ Ordering the respondent to participate in treatment, counseling or other programs as the court
132 deems appropriate;

133 ~~8-~~9. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if
134 such petitioner meets the definition of owner in § 3.2-6500; and

135 ~~9-~~10. Any other relief necessary for the protection of the petitioner and family or household
136 members of the petitioner, including a provision for temporary custody or visitation of a minor child.

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

140 B. The protective order may be issued for a specified period of time up to a maximum of two years.
141 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
142 the two-year period if no date is specified. Prior to the expiration of the protective order, a petitioner may
143 file a written motion requesting a hearing to extend the order. Proceedings to extend a protective order
144 shall be given precedence on the docket of the court. If the petitioner was a family or household member
145 of the respondent at the time the initial protective order was issued, the court may extend the protective
146 order for a period not longer than two years to protect the health and safety of the petitioner or persons
147 who are family or household members of the petitioner at the time the request for an extension is made.
148 The extension of the protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m.
149 on the last day of the two-year period if no date is specified. Nothing herein shall limit the number of
150 extensions that may be requested or issued.

151 C. A copy of the protective order shall be served on the respondent and provided to the petitioner
152 as soon as possible. The court, including a circuit court if the circuit court issued the order, shall forthwith,
153 but in all cases no later than the end of the business day on which the order was issued, enter and transfer
154 electronically to the Virginia Criminal Information Network the respondent's identifying information and
155 the name, date of birth, sex, and race of each protected person provided to the court and shall forthwith
156 forward the attested copy of the protective order containing any such identifying information to the
157 primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of
158 the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any
159 modification as necessary to the identifying information and other appropriate information required by the

160 Department of State Police into the Virginia Criminal Information Network established and maintained
161 by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served
162 forthwith upon the respondent and due return made to the court. Upon service, the agency making service
163 shall enter the date and time of service and other appropriate information required by the Department of
164 State Police into the Virginia Criminal Information Network and make due return to the court. If the order
165 is later dissolved or modified, a copy of the dissolution or modification order shall also be attested,
166 forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective
167 orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith
168 verify and enter any modification as necessary to the identifying information and other appropriate
169 information required by the Department of State Police into the Virginia Criminal Information Network
170 as described above and the order shall be served forthwith and due return made to the court.

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

173 E. The court may assess costs and attorneys' fees against either party regardless of whether an
174 order of protection has been issued as a result of a full hearing.

175 F. Any judgment, order or decree, whether permanent or temporary, issued by a court of
176 appropriate jurisdiction in another state, the United States or any of its territories, possessions or
177 Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose
178 of preventing violent or threatening acts or harassment against or contact or communication with or
179 physical proximity to another person, including any of the conditions specified in subsection A, shall be
180 accorded full faith and credit and enforced in the Commonwealth as if it were an order of the
181 Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing
182 jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such
183 person's due process rights and consistent with federal law. A person entitled to protection under such a
184 foreign order may file the order in any juvenile and domestic relations district court by filing with the
185 court an attested or exemplified copy of the order. Upon such a filing, the clerk shall forthwith forward an
186 attested copy of the order to the primary law-enforcement agency responsible for service and entry of

