

SENATE BILL NO. 486

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on _____)

(Patron Prior to Substitute--Senator McClellan)

A BILL to amend and reenact §§ 19.2-152.7:1, 19.2-152.9, and 19.2-152.10 of the Code of Virginia, relating to protective orders; petitioner to include employer; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-152.7:1, 19.2-152.9, and 19.2-152.10 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-152.7:1. Definitions.

As used in this chapter:

"Act of violence, force, or threat" means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.

"Petitioner" includes an employer whose employee has been subjected to an act of violence, force, or threat in connection with his employment.

§ 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, 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 or employee of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown

27 when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. If an
28 ex parte order is issued without an affidavit or a completed form as prescribed by subsection D of § 19.2-
29 152.8 being presented, the court, in its order, shall state the basis upon which the order was entered,
30 including a summary of the allegations made and the court's findings. Immediate and present danger of
31 any act of violence, force, or threat or evidence sufficient to establish probable cause that an act of
32 violence, force, or threat has recently occurred shall constitute good cause.

33 A preliminary protective order may include any one or more of the following conditions to be
34 imposed on the respondent:

35 1. Prohibiting acts of violence, force, or threat or criminal offenses that may result in injury to
36 person or property;

37 2. Prohibiting such other contacts by the respondent with the petitioner ~~or~~ the petitioner's family
38 or household members, or petitioner's employees as the court deems necessary for the health and safety
39 of such persons;

40 3. Such other conditions as the court deems necessary to prevent (i) acts of violence, force, or
41 threat, (ii) criminal offenses that may result in injury to person or property, or (iii) communication or other
42 contact of any kind by the respondent; and

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

45 B. The court shall forthwith, but in all cases no later than the end of the business day on which the
46 order was issued, enter and transfer electronically to the Virginia Criminal Information Network the
47 respondent's identifying information and the name, date of birth, sex, and race of each protected person
48 provided to the court. A copy of a preliminary protective order containing any such identifying information
49 shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of
50 protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall
51 forthwith verify and enter any modification as necessary to the identifying information and other
52 appropriate information required by the Department of State Police into the Virginia Criminal Information
53 Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52

54 and the order shall be served forthwith on the alleged perpetrator in person as provided in § 16.1-264, and
55 due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit
56 court shall forthwith forward an attested copy of the order containing the respondent's identifying
57 information and the name, date of birth, sex, and race of each protected person provided to the court to
58 the primary law-enforcement agency providing service and entry of protective orders and upon receipt of
59 the order, the primary law-enforcement agency shall enter the name of the person subject to the order and
60 other appropriate information required by the Department of State Police into the Virginia Criminal
61 Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et
62 seq.) of Title 52 and the order shall be served forthwith on the alleged perpetrator in person as provided
63 in § 16.1-264. Upon service, the agency making service shall enter the date and time of service and other
64 appropriate information required by the Department of State Police into the Virginia Criminal Information
65 Network and make due return to the court. The preliminary order shall specify a date for the full hearing.
66 The hearing shall be held within 15 days of the issuance of the preliminary order, unless the court is closed
67 pursuant to § 16.1-69.35 or 17.1-207 and such closure prevents the hearing from being held within such
68 time period, in which case the hearing shall be held on the next day not a Saturday, Sunday, legal holiday,
69 or day on which the court is lawfully closed. If such court is closed pursuant to § 16.1-69.35 or 17.1-207,
70 the preliminary protective order shall remain in full force and effect until it is dissolved by such court,
71 until another preliminary protective order is entered, or until a protective order is entered. If the respondent
72 fails to appear at this hearing because the respondent was not personally served, the court may extend the
73 protective order for a period not to exceed six months. The extended protective order shall be served as
74 soon as possible on the respondent. However, upon motion of the respondent and for good cause shown,
75 the court may continue the hearing. The preliminary order shall remain in effect until the hearing. Upon
76 request after the order is issued, the clerk shall provide the petitioner with a copy of the order and
77 information regarding the date and time of service. The order shall further specify that either party may at
78 any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on
79 the motion shall be given precedence on the docket of the court. Upon petitioner's motion to dissolve the
80 preliminary protective order, a dissolution order may be issued ex parte by the court with or without a

81 hearing. If an ex parte hearing is held, it shall be heard by the court as soon as practicable. If a dissolution
82 order is issued ex parte, the court shall serve a copy of such dissolution order on respondent in conformity
83 with §§ 8.01-286.1 and 8.01-296.

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

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

96 D. At a full hearing on the petition, the court may issue a protective order pursuant to § 19.2-
97 152.10 if the court finds that the petitioner has proven the allegation that the petitioner is or has been,
98 within a reasonable period of time, subjected to an act of violence, force, or threat by a preponderance of
99 the evidence.

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

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

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

107 H. Upon issuance of a preliminary protective order, the clerk of the court shall make available to
108 the petitioner information that is published by the Department of Criminal Justice Services for victims of
109 domestic violence or for petitioners in protective order cases.

110 **§ 19.2-152.10. Protective order.**

111 A. The court may issue a protective order pursuant to this chapter to protect the health and safety
112 of the petitioner and family or household members of a petitioner or employees of a petitioner upon (i)
113 the issuance of a petition or warrant for, or a conviction of, any criminal offense resulting from the
114 commission of an act of violence, force, or threat or (ii) a hearing held pursuant to subsection D of § 19.2-
115 152.9. A protective order issued under this section may include any one or more of the following
116 conditions to be imposed on the respondent:

117 1. Prohibiting acts of violence, force, or threat or criminal offenses that may result in injury to
118 person or property;

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

122 3. Any other relief necessary to prevent (i) acts of violence, force, or threat, (ii) criminal offenses
123 that may result in injury to person or property, or (iii) communication or other contact of any kind by the
124 respondent; and

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

127 B. Except as provided in subsection C, the protective order may be issued for a specified period of
128 time up to a maximum of two years. The protective order shall expire at 11:59 p.m. on the last day specified
129 or at 11:59 p.m. on the last day of the two-year period if no date is specified. Prior to the expiration of the
130 protective order, a petitioner may file a written motion requesting a hearing to extend the order.
131 Proceedings to extend a protective order shall be given precedence on the docket of the court. The court
132 may extend the protective order for a period not longer than two years to protect the health and safety of
133 the petitioner or persons who are family or household members of the petitioner or employees of the

134 petitioner at the time the request for an extension is made. The extension of the protective order shall
135 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 period if no
136 date is specified. Nothing herein shall limit the number of extensions that may be requested or issued.

137 C. Upon conviction for an act of violence as defined in § 19.2-297.1 and upon the request of the
138 victim or of the attorney for the Commonwealth on behalf of the victim, the court may issue a protective
139 order to the victim pursuant to this chapter to protect the health and safety of the victim. The protective
140 order may be issued for any reasonable period of time, including up to the lifetime of the defendant, that
141 the court deems necessary to protect the health and safety of the victim. The protective order shall expire
142 at 11:59 p.m. on the last day specified in the protective order, if any. Upon a conviction for violation of a
143 protective order issued pursuant to this subsection, the court that issued the original protective order may
144 extend the protective order as the court deems necessary to protect the health and safety of the victim. The
145 extension of the protective order shall expire at 11:59 p.m. on the last day specified, if any. Nothing herein
146 shall limit the number of extensions that may be issued.

147 D. A copy of the protective order shall be served on the respondent and provided to the petitioner
148 as soon as possible. The court, including a circuit court if the circuit court issued the order, shall forthwith,
149 but in all cases no later than the end of the business day on which the order was issued, enter and transfer
150 electronically to the Virginia Criminal Information Network the respondent's identifying information and
151 the name, date of birth, sex, and race of each protected person provided to the court and shall forthwith
152 forward the attested copy of the protective order and containing any such identifying information to the
153 primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of
154 the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any
155 modification as necessary to the identifying information and other appropriate information required by the
156 Department of State Police into the Virginia Criminal Information Network established and maintained
157 by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served
158 forthwith upon the respondent and due return made to the court. Upon service, the agency making service
159 shall enter the date and time of service and other appropriate information required into the Virginia
160 Criminal Information Network and make due return to the court. If the order is later dissolved or modified,

161 a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary
162 law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the
163 order by the primary law-enforcement agency, the agency shall forthwith verify and enter any
164 modification as necessary to the identifying information and other appropriate information required by the
165 Department of State Police into the Virginia Criminal Information Network as described above and the
166 order shall be served forthwith and due return made to the court.

167 E. Except as otherwise provided, a violation of a protective order issued under this section shall
168 constitute contempt of court.

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

171 G. Any judgment, order or decree, whether permanent or temporary, issued by a court of
172 appropriate jurisdiction in another state, the United States or any of its territories, possessions or
173 Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose
174 of preventing violent or threatening acts or harassment against or contact or communication with or
175 physical proximity to another person, including any of the conditions specified in subsection A, shall be
176 accorded full faith and credit and enforced in the Commonwealth as if it were an order of the
177 Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing
178 jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such
179 person's due process rights and consistent with federal law. A person entitled to protection under such a
180 foreign order may file the order in any appropriate district court by filing with the court, an attested or
181 exemplified copy of the order. Upon such a filing, the clerk shall forthwith forward an attested copy of
182 the order to the primary law-enforcement agency responsible for service and entry of protective orders
183 which shall, upon receipt, enter the name of the person subject to the order and other appropriate
184 information required by the Department of State Police into the Virginia Criminal Information Network
185 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where
186 practical, the court may transfer information electronically to the Virginia Criminal Information Network.

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

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

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

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

204 K. As used in this section:

205 "Copy" includes a facsimile copy; and

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

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

210 M. An appeal of a protective order issued pursuant to this section shall be given expedited review
211 by the Court of Appeals.

212 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
213 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**

214 appropriation is _____ for periods of imprisonment in state adult correctional facilities;
215 therefore, Chapter 552 of the Acts of Assembly of 2021, Special Session I, requires the Virginia
216 Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-
217 19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is _____ for
218 periods of commitment to the custody of the Department of Juvenile Justice.

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