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VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 16.1-253.4 and 19.2-81.3 of the Code of Virginia, relating to arrest for domestic assault; emergency protective orders; definition of law-enforcement officer.

[S 71]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.4 and 19.2-81.3 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 as the judge or magistrate deems necessary to protect the safety of such persons; and

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.

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

C. An emergency protective order issued pursuant to this section shall expire at 11:59 p.m. on the third day following issuance. If the expiration occurs on a day that the court is not in session, the emergency protective order shall be extended until 11:59 p.m. on the next day that the juvenile and domestic relations district court is in session. When issuing an emergency protective order under this section, the judge or magistrate shall provide the protected person or the law-enforcement officer seeking the emergency protective order with the form for use in filing petitions pursuant to § 16.1-253.1 and written information regarding protective orders that shall include the telephone numbers of domestic violence agencies and legal referral sources on a form prepared by the Supreme Court. If these forms are provided to a law-enforcement officer, the officer may provide these forms to the protected person when giving the emergency protective order to the protected person. The respondent may at any time file a motion with the court requesting a hearing to dissolve or modify the order issued hereunder. The hearing on the motion shall be given precedence on the docket of the court.

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

E. The court or magistrate shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information

57 Network the respondent's identifying information and the name, date of birth, sex, and race of each
58 protected person provided to the court or magistrate. A copy of an emergency protective order issued
59 pursuant to this section containing any such identifying information shall be forwarded forthwith to the
60 primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of
61 the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any
62 modification as necessary to the identifying information and other appropriate information required by
63 the Department of State Police into the Virginia Criminal Information Network established and
64 maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be
65 served forthwith upon the respondent and due return made to the court. However, if the order is issued
66 by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order
67 containing the respondent's identifying information and the name, date of birth, sex, and race of each
68 protected person provided to the court to the primary law-enforcement agency providing service and
69 entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter
70 the name of the person subject to the order and other appropriate information required by the
71 Department of State Police into the Virginia Criminal Network established and maintained by the
72 Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith
73 on the respondent. Upon service, the agency making service shall enter the date and time of service and
74 other appropriate information required by the Department of State Police into the Virginia Criminal
75 Information Network and make due return to the court. One copy of the order shall be given to the
76 allegedly abused person when it is issued, and one copy shall be filed with the written report required
77 by subsection D of § 19.2-81.3. The judge or magistrate who issues an oral order pursuant to an
78 electronic request by a law-enforcement officer shall verify the written order to determine whether the
79 officer who reduced it to writing accurately transcribed the contents of the oral order. The original copy
80 shall be filed with the clerk of the juvenile and domestic relations district court within five business
81 days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or
82 modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency
83 responsible for service and entry of protective orders, and upon receipt of the order by the primary
84 law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the
85 identifying information and other appropriate information required by the Department of State Police
86 into the Virginia Criminal Information Network as described above and the order shall be served
87 forthwith and due return made to the court. Upon request, the clerk shall provide the allegedly abused
88 person with information regarding the date and time of service.

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

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

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

101 I. 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
105 Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

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

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

108 **§ 19.2-81.3. Arrest without a warrant authorized in cases of assault and battery against a**
109 **family or household member and stalking and for violations of protective orders; procedure, etc.**

110 A. Any law-enforcement officer with the powers of arrest under subsection A of § 19.2-81 may arrest
111 without a warrant for an alleged violation of § 18.2-57.2, 18.2-60.4, or 16.1-253.2 regardless of whether
112 such violation was committed in his presence, if such arrest is based on probable cause or upon personal
113 observations or the reasonable complaint of a person who observed the alleged offense or upon personal
114 investigation.

115 B. A law-enforcement officer having probable cause to believe that a violation of § 18.2-57.2 or
116 16.1-253.2 has occurred shall arrest and take into custody the person he has probable cause to believe,
117 based on the totality of the circumstances, was the predominant physical aggressor unless there are

118 special circumstances which would dictate a course of action other than an arrest. The standards for
 119 determining who is the predominant physical aggressor shall be based on the following considerations:
 120 (i) who was the first aggressor, (ii) the protection of the health and safety of family and household
 121 members, (iii) prior complaints of family abuse by the allegedly abusing person involving the family or
 122 household members, (iv) the relative severity of the injuries inflicted on persons involved in the
 123 incident, (v) whether any injuries were inflicted in self-defense, (vi) witness statements, and (vii) other
 124 observations.

125 C. A law-enforcement officer having probable cause to believe that a violation of § 18.2-60.4 has
 126 occurred that involves physical aggression shall arrest and take into custody the person he has probable
 127 cause to believe, based on the totality of the circumstances, was the predominant physical aggressor
 128 unless there are special circumstances which would dictate a course of action other than an arrest. The
 129 standards for determining who is the predominant physical aggressor shall be based on the following
 130 considerations: (i) who was the first aggressor, (ii) the protection of the health and safety of the person
 131 to whom the protective order was issued and the person's family and household members, (iii) prior acts
 132 of violence, force, or threat, as defined in § 19.2-152.7:1, by the person against whom the protective
 133 order was issued against the person protected by the order or the protected person's family or household
 134 members, (iv) the relative severity of the injuries inflicted on persons involved in the incident, (v)
 135 whether any injuries were inflicted in self-defense, (vi) witness statements, and (vii) other observations.

136 D. Regardless of whether an arrest is made, the officer shall file a written report with his department,
 137 which shall state whether any arrests were made, and if so, the number of arrests, specifically including
 138 any incident in which he has probable cause to believe family abuse has occurred, and, where required,
 139 including a complete statement in writing that there are special circumstances that would dictate a course
 140 of action other than an arrest. The officer shall provide the allegedly abused person or the person
 141 protected by an order issued pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, both orally and in
 142 writing, information regarding the legal and community resources available to the allegedly abused
 143 person or person protected by the order. Upon request of the allegedly abused person or person
 144 protected by the order, the department shall make a summary of the report available to the allegedly
 145 abused person or person protected by the order.

146 E. In every case in which a law-enforcement officer makes an arrest under this section for a violation
 147 of § 18.2-57.2, he shall petition for an emergency protective order as authorized in § 16.1-253.4 when
 148 the person arrested and taken into custody is brought before the magistrate, except if the person arrested
 149 is a minor, a petition for an emergency protective order shall not be required. Regardless of whether an
 150 arrest is made, if the officer has probable cause to believe that a danger of acts of family abuse exists,
 151 the law-enforcement officer shall seek an emergency protective order under § 16.1-253.4, except if the
 152 suspected abuser is a minor, a petition for an emergency protective order shall not be required.

153 F. A law-enforcement officer investigating any complaint of family abuse, including but not limited
 154 to assault and battery against a family or household member shall, upon request, transport, or arrange
 155 for the transportation of an abused person to a hospital or safe shelter, or to appear before a magistrate.
 156 Any local law-enforcement agency may adopt a policy requiring an officer to transport or arrange for
 157 transportation of an abused person as provided in this subsection.

158 G. The definition of "family or household member" in § 16.1-228 applies to this section.

159 H. As used in this section, a "law-enforcement officer" means (i) any full-time or part-time employee
 160 of a police department or sheriff's office which is part of or administered by the Commonwealth or any
 161 political subdivision thereof, and any campus police officer appointed under Chapter 17 (§ 23-232 et
 162 seq.) of Title 23, and who is responsible for the prevention and detection of crime and the enforcement
 163 of the penal, traffic or highway laws of this Commonwealth ~~and~~; (ii) any member of an auxiliary police
 164 force established pursuant to § 15.2-1731; *and (iii) any special conservator of the peace who meets the*
 165 *certification requirements for a law-enforcement officer as set forth in § 15.2-1706.* Part-time employees
 166 are compensated officers who are not full-time employees as defined by the employing police
 167 department or sheriff's office.