



# Protective Orders: What does the new legislation mean?

July 2011

Special points of interest:

- **Protective Orders (formerly "Stalking" Protective Orders)**
- **Family Abuse Protective Orders**
- **Impact of the new legislation on law enforcement officers**
- **Frequently Asked Questions**

## 2011 Legislative Changes

In 2011, the Virginia General Assembly enacted legislation that made a number of changes to the current protective order system. The legislative changes impact all facets of the protective order process: who may obtain protective orders, how the orders are issued by the courts, how the orders are enforced against the alleged abusers, and how violations of the orders are prosecuted.

As a result of the legislative changes:

- Protective orders are available to a wider class of victims for a wider range of threatening or violent conduct; they are no longer limited to victims of family abuse or to victims of specified criminal acts (stalking, sexual battery, aggravated sexual battery, or crimes resulting in serious bodily injury).
- The conduct or behavior requirements for obtaining family abuse protective orders are consistent with those for obtaining protective orders where there is no family or household relationship between the parties.
- The penalties for violating family abuse protective orders and protective orders are more consistent.

This document explains the newly enacted legislative changes and discusses what those changes mean.

## Protective Orders (Formerly known as "Protective Orders for Stalking")

### Virginia Code §§ 19.2-152.8 through 19.2-152.10

*"Old" system (Prior to July 1, 2011):*

Protective orders issued pursuant to Virginia Code §§ 19.2-152.8-152.10 were formerly referred to as "protective orders for stalking" and were issued in cases involving specified criminal acts: stalking, sexual battery, aggravated sexual battery, or crimes resulting in serious bodily injury.

Although civil in nature, these orders were issued in conjunction with criminal proceedings. An arrest warrant for the criminal conduct was required for the issuance of the protective order, whether an emergency, preliminary, or final protective order. Accordingly, these orders were only available to victims who were involved with or who had initiated criminal proceedings.

The relationship of the parties was not a factor in the issuance of these orders. These protective orders were issued regardless of whether the parties had a family or household member relationship. Where a family or household member relationship did not exist between the parties, the victim was required to petition for a "stalking protective order" in the General District Court.

With regard to violations of "stalking protective orders," any violation of a stalking protective order was classified as a Class 1 Misdemeanor. The Code did not specify enhanced penalties for second or subsequent violations of the order, assault and battery against the protected party by the respondent, or entry into the protected party's home by the respondent.

This publication was supported in whole or in part by Grant No. 2010-WE-AX-0056, awarded to Virginia by the United States Department of Justice from funds authorized by the Federal Violence Against Women Act. The opinions, findings, conclusions or recommendations expressed herein are those of the authors and do not necessarily reflect the views of the United States Department of Justice.

## Protective Orders (Formerly known as “Protective Orders for Stalking”), Continued

*“New” system (After July 1, 2011):*

First, the new legislation renames the “stalking protective orders” to simply “protective orders.”

The new legislation expands the class of persons eligible to obtain a protective order by enlarging the types of conduct that permit the issuance of a protective order from certain specified criminal acts (stalking, sexual battery, aggravated sexual battery, or crimes resulting in serious bodily injury) to 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.

As with the previous system, these protective orders are available regardless of the relationship of the parties involved. Where a family or household member relationship does not exist between the parties, initial petitions for these protective orders will still be heard in the General District Court.

The new legislation also removes the requirement that an arrest warrant be issued as a prerequisite to the issuance of a protective order. Now, a protective order may be issued when a petitioner has been subjected to an act of violence, force or threat, **OR** an arrest warrant has been issued:

*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 of the petitioner.*

Virginia Code § 19.2-152.9 (A) (Preliminary Protective Orders) (emphasis added).

Finally, the penalties for violation of a protective order were amended to include specific and enhanced punishment for second or subsequent violations of the order, assault and battery against the protected party by the respondent, or entry into the protected party’s home by the respondent. In addition, the penalties for violation of protective orders were made consistent with those for family abuse protective orders.

### New Definition of Conduct:

An "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."

Virginia Code § 19.2-152.7:1.

### Virginia Code §18.2-60.4. Violation of protective orders; penalty.

Any person who violates any provision of a protective order issued pursuant to § 19.2-152.8, 19.2-152.9 or 19.2-152.10 is guilty of a Class 1 misdemeanor. Conviction hereunder shall bar a finding of contempt for the same act. The punishment for any person convicted of a second offense of violating a protective order, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, shall include a mandatory minimum term of confinement of 60 days. Any person convicted of a third or subsequent offense of violating a protective order, when the offense is committed within 20 years of the first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence, is guilty of a Class 6 felony and the punishment shall include a mandatory minimum term of confinement of six months.

If the respondent commits an assault and battery upon any party protected by the protective order resulting in serious bodily injury to the party, he is guilty of a Class 6 felony. Any person who violates such a protective order by furtively entering the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty provided by law.

Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended.

Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § 19.2-152.10 for a specified period not exceeding two years from the date of conviction.

## Consequences—The New Protective Order Changes

While these protective orders are still available to anyone, regardless of the relationship of the parties, the “new” protective order encompasses a wider definition of behavior or criminal acts for which the protective order may be sought. Accordingly, the new legislation enables a larger class of persons to obtain protective orders.

In addition, there is no longer a requirement that an arrest warrant be issued as a prerequisite to a victim of crime obtaining the protective order. Accordingly, victims who do not wish to initiate criminal proceedings or obtain a warrant against a perpetrator may still seek the protection provided by the protective order.

Despite the significant changes to the requirements for and scope of protective orders issued pursuant to Title 19.2, the overall procedure for obtaining these protective orders remains the same. In addition, the expiration times and service requirements for emergency, preliminary, and final protective orders remain the same.



## Family Abuse Protective Orders

### Virginia Code §§ 16.1-253.4, 16.1-253.1, 16.1-279.1

In addition to the changes that apply to Title 19.2 protective orders, there were a number of changes enacted to the family abuse protective order statutes (Title 16.1).

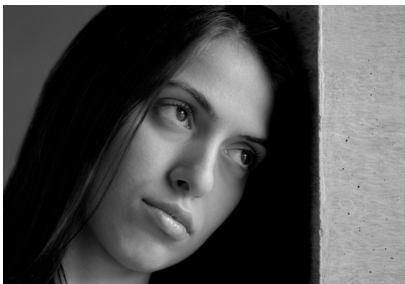
The definition of “family abuse” was amended to make the conduct and behavioral elements for obtaining family abuse protective orders consistent with those for obtaining protective orders.

*“Family abuse” 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 and that is committed by a person against such person’s family or household member. 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.*

Virginia Code § 16.1-228 (emphasis added).

There were a number of other specific changes to clarify the family abuse protective order statutes:

- The language for preliminary family abuse protective orders (Virginia Code § 16.1-253.1) was amended to make it clear that contact by the respondent with the petitioner or the petitioner’s family or household members may be prohibited by the order, not “contact between the parties.” This makes the preliminary protective order language more consistent with the language in the emergency and “final” family abuse protective order statutes and makes clear that the conduct of the petitioner may not be controlled by his or her own protective order.



- Family abuse protective orders may impose a variety of conditions on the respondent or allegedly abusive party. The enumerated conditions for family abuse protective orders were amended to include a condition prohibiting the allegedly abusing person from committing a criminal offense that results in injury to person *or property*. The added language related to “property” not only adds a mechanism for protecting tangible, physical property, it also adds a mechanism for protecting companion animals, which are considered personal property.

## Legislative Changes that Impact Law Enforcement Officers

The new legislation contains a number of changes that impact law enforcement officers.

### **Arrest policies:**

Pursuant to Virginia Code § 19.2-81.3, law enforcement officers are permitted to make warrantless arrests in cases of assault and battery against a family or household member, stalking, and for violations of protective orders, whether they are family abuse protective orders or protective orders.

The legislative changes clarify the procedure for law enforcement officers in making arrests for violations of protective orders pursuant to Virginia Code § 18.2-60.4, formerly the “stalking protective orders.” As with violations of family abuse protective orders, where there is probable cause to believe a violation has occurred, law enforcement officers must arrest and take into custody the person the officer has probable cause to believe, based on the totality of the circumstances, was the predominant physical aggressor.

This provision is now parallel for protective orders. Now, where a law enforcement officer has probable cause to believe a violation of a protective order has occurred, he must arrest and take into custody the person the officer has probable cause to believe was the predominant physical aggressor:

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

Virginia Code § 19.2-81.3(C).

### **Felony violations of protective orders:**

As previously discussed, the penalties for violation of a protective order issued pursuant to Virginia Code §§ 19.2-152.8-152.10 (formerly the “stalking protective orders”) were amended to include specific and enhanced punishment for second or subsequent violations of the order, assault and battery against the protected party by the respondent, or entry into the protected party's home by the respondent. These penalties for violation of protective orders were made consistent with those for family abuse protective orders. See Virginia Code § 18.2-60.4.

Now, third or subsequent violations of protective orders that occur within 20 years of the first conviction, where the current or previous violations were based upon an act or threat of violence, are classified as Class 6 felonies.

### **Request for extension of emergency protective orders:**

Currently, law enforcement officers may ask for the extension of an emergency family abuse protective order where the person in need of protection is physically or mentally incapable of filing a petition for a preliminary or final protective order. With the new amendments, law enforcement officers may ask for a similar extension of an emergency protective order issued pursuant to Title 19.2.

### **Arrest without a warrant:**

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

## Frequently Asked Questions

### ***Do the new legislative changes impact where a person goes to file a petition to obtain a protective order?***

No, the procedure for obtaining a protective order, including the courts where a petition should be filed, has not changed.

In Virginia, where a person files a petition for a protective order depends on the type of relationship he or she has or has had with the allegedly abusive, violent, or threatening party. If the parties are family or household members by Virginia statute, the person seeking the protective order, or petitioner, may be eligible for a Family Abuse Protective Order. Petitions for these protective orders are filed with the Juvenile and Domestic Relations District Court.

Regardless of the relationship of the parties, where either the petitioner or the allegedly abusive party (the respondent) are under the age of 18, the petition should be initiated in the Juvenile and Domestic Relations District Court.

Where there is no family or household relationship between the parties, and where neither party is a minor, these requests for protective orders are initiated in the General District Court.

#### ***Definition—Family or household member:***

- i) the person's spouse, whether or not he or she resides in the same home with the person,
- ii) the person's former spouse, whether or not he or she resides in the same home with the person,
- iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person,
- iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person,
- v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or
- vi) any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person

Virginia Code § 16.1-228.

### ***Where do I find more information?***

For more information about the new protective order legislation and for resources related to protective orders in Virginia, visit the websites for the following agencies/organizations:

Virginia Sexual and Domestic Violence Action Alliance: [www.vsdvalliance.org](http://www.vsdvalliance.org)

Community Defined Solutions to Sexual and Domestic Violence: VIRGINIA: [www.communitysolutionsva.org](http://www.communitysolutionsva.org)

Office of the Attorney General: [www.ag.virginia.gov](http://www.ag.virginia.gov) (Under “Key Issues,” “Domestic Violence”)

Department of Criminal Justice Services: [www.dcjs.virginia.gov](http://www.dcjs.virginia.gov)

Virginia State Police: [www.vsp.virginia.gov](http://www.vsp.virginia.gov)

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