



*presents*

 **YOU AND THE LAW**

*Legal and Social Tools for Assisting  
Survivors of Violence*

*May 9, 2019*



 **YOU AND THE LAW****Legal and Social Tools for Assisting Survivors of**

May 9, 2019

Roanoke Higher Education Center

**PROGRAM**

- 5:30 pm      **Check In**—Lobby
- 6:00 pm      **Welcome** – David Biedler, Esq., You and the Law Committee  
**Introductions** – The Honorable Michael F. Urbanski
- 6:05 pm      **Overview of the Violence Against Women Act (VAWA)** – The Honorable  
Michael F. Urbanski
- 6:15 pm      **Panel** – Discussion of the Legal and Social Tools for Assisting Survivors of Violence  
Participants:  
Moderator – Elizabeth Barbour, Esq. – The Legal Aid Society of Roanoke Valley  
Panelists –  
                  The Honorable Frank W. Rogers, III – Juvenile and Domestic Relations  
                  Tonia Drewery, Esq. – The Legal Aid Society of Roanoke Valley  
                  Stacey Sheppard – TAP, Director of Housing and Human Services  
                  Teresa Berry – Licensed Professional Counselor  
                  Ashley Frankie – Program Manager, The Salvation Army Turning Point
- 7:40 pm      **Questions**
- 8:00 pm      **Adjournment**

**\*There will be a 15 minute break at 6:50 p.m.**

## **SPEAKER BIOGRAPHIES**

**The Honorable Michael F. Urbanski** -- Judge Urbanski took the oath of office as United States District Judge for the Western District of Virginia on May 13, 2011 and principally hears cases in the Roanoke and Harrisonburg Divisions. He became Chief United States District Judge for the Western District of Virginia on July 3, 2017.

From 2004 to 2011, Judge Urbanski served as United States Magistrate Judge. While in that role, he initiated a federal Veterans Treatment Court which continues today.

Prior to judicial service, Judge Urbanski practiced law for 22 years with Vinson & Elkins in Washington, DC (1982-1984) and Woods, Rogers in Roanoke, Virginia (1984-2004). His practice focused on commercial litigation with substantial emphasis in the areas of business torts, antitrust, unfair competition and intellectual property law.

Judge Urbanski graduated from the College of William and Mary in 1978 and the University of Virginia Law School in 1981. He served as a law clerk for The Honorable James C. Turk, then the Chief United States District Judge for the Western District of Virginia, after his graduation from law school.

**The Honorable Frank W. Rogers, III** -- Before becoming a Juvenile and Domestic Relations District Court judge on January 1, 2015, Judge Rogers practiced law in Roanoke, VA for thirty years. He focused his trial practice on family law matters. He served as chair of the Virginia State Bar's Family Law Section and Special Committee on Resolution of Fees Disputes, and Committee on Lawyer Referral, as a member of the Virginia Bar Association's Domestic Relations Council, as chair of the Virginia Trial Lawyers Association's Committee on Community and Civic Services, as a member of the Virginia Family Law Coalition, and as President of the Roanoke Bar Association. He was elected a fellow of the Virginia Law Foundation in 2007 and as an inaugural fellow of the Roanoke Law Foundation in 2012.

Judge Rogers currently serves as Chief Judge of the Juvenile and Domestic Relations District Courts for the 23rd Judicial Circuit, and he sits primarily in the City of Roanoke Juvenile and Domestic Relations District Court. He is the lead judge for the City of Roanoke J&DR Best Practice Team, a member of the State Council of Juvenile Court Judges' Schools and Courts Committee, a member of the Judicial Conference of Virginia for District Courts' Nominations, Memorials and Resolutions and Forms Advisory Committees, and a Juvenile and Domestic Relations District Court mentor judge.

**Tonia Drewery, Esq.** – Ms. Drewery is a Staff Attorney for The Legal Aid Society of Roanoke Valley. She grew up in the Roanoke Valley and received her Bachelor of Arts degree from Roanoke College, graduating Magna Cum Laude. After teaching elementary school in Roanoke City, Tonia ventured to Appalachian School of Law where she served on law review and was awarded top senior editor. Prior to joining Legal Aid, Tonia was employed as a law clerk for the

Twenty-Third Judicial Circuit and was an Assistant Commonwealth's Attorney with the City of Roanoke.

Ms. Drewery is the President of the board of directors for SARA. This organization provides direct services for victims of sexual assault. She also sits on the advisory boards of the TAP Domestic Violence Services and Sabrina's Place, a supervised visitation program for domestic violence victims. Ms. Drewery serves on the Roanoke Valley Violence Prevention Council and the Roanoke Regional Family and Intimate Partner Violence Fatality Review Team.

**Elizabeth Barbour, Esq.** – Ms. Barbour is a Domestic Violence Staff Attorney for The Legal Aid Society of the Roanoke Valley. A graduate of Washington and Lee University School of Law, and Roanoke native, she represents victims of domestic violence in uncontested divorce, and protective order and custody hearings in the juvenile and domestic relations district courts in the Roanoke and beyond. She has received training in the trauma-informed approach to working with victims and survivors of domestic violence. Ms. Barbour regularly collaborates with area victim services providers and agencies in meetings, initiatives, events, and trainings. In 2018 she received a Purple Ribbon Award for Excellence in Service to Victims from Bedford Domestic Violence Services.

**Stacey Sheppard** – Ms. Sheppard is no stranger to the field of human services. She retired in 2016 as the first female Sergeant from the City of Salem Police Department after serving the Salem Community for nearly 21 years. Stacey was an instructor at the police academy for 17 years where she instructed recruits in Sex Crimes Investigations and Criminal Investigations.

She currently oversees the Fatherhood Programs, TAP Domestic Violence Services Program; Sabrina's Place Safe Exchange/Supervised Visitation Program and is the Community Education Coordinator for all.

Ms. Sheppard has a bachelor's degree in criminal justice from Ferrum College. She sits on the Roanoke Valley Domestic Violence Fatality Review Team and was a core founding member of the team. Her work in advocacy for adults and children earned her a Golden Halo awarded by Children's Trust. Ms. Sheppard has taught throughout the state and has been instrumental in trauma informed care training for many agencies to better improve victim services.

Ms. Sheppard credits her work with families and victims by the love and enthusiasm she has for the cause of helping survivors of abuse. She feels that no one should hide in the shadows of violence or intimate partner violence and fights for adults and children of abuse. Her greatest passions of social justice are children's rights, foster care advancements, adoptive parenting supportive rights and intimate partner violence prevention.

**Teresa C. Berry** -- Ms. Berry received her Masters' Degree in Counseling Psychology from Radford University. She is a Licensed Professional Counselor (LPC); Licensed Marriage and Family Therapist (LMFT); and, a Licensed Massage Therapist (LMT).

Ms. Berry has over 30 years of extensive experience in the field of services to victims of sexual violence. She has experience providing trauma focused counseling to victims of rape, sexual assault, sexual abuse and their families. She provides counseling for sexually assaulted and sexually abused adults and adolescents utilizing individual, group and family counseling. She provides community education and allied professional training on trauma focused and informed services working with victims of rape, sexual assault and sexual abuse; and sexual harassment. She has experience in grant-writing, fiscal and data management, budget development, federal and state reporting. Throughout her career, Ms. Berry has served on a variety of local and statewide boards, coalitions, committees and task forces. In 2015, Ms. Berry was appointed by Gov. McAuliffe for a 4-year commission on his Advisory Committee on Sexual and Domestic Violence for which she serves as the Vice-Chair.

**Ashley Frankie** – Ms. Frankie is originally from Stephens City, Virginia. She received her Associates Degree in general studies in 2007 from Lord Fairfax Community College and her Bachelor's in Social Work from James Madison University. After graduation, Ms. Frankie moved to Roanoke, Virginia where she has worked with at-risk youth, those suffering with mental illness, families involved with child protective services, victims of domestic violence and families experiencing homelessness.

In 2013 Ms. Frankie began her career at the Salvation Army Turning Point as the Children's Coordinator, working with children and families who were victims of domestic violence. She gained experience working with the courts and learned to address the complexities involved in working with families and entered case management. In late 2015 Ms. Frankie moved into the Program Manager role at Family Promise of Greater Roanoke. There she continued to implement trauma informed services to homeless families. In addition to providing trauma informed services she worked with a large volunteer network, providing support and training on an on-going basis.

Ms. Frankie returned to The Salvation Army Turning Point in 2018 as the Program Manager. She is passionate about advocating for victims of domestic violence, sexual assault and human trafficking and helping them find their voice. She continues to believe there is always hope, even in the darkest places.



 **YOU AND THE LAW**

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## **Family Abuse Protective Orders Basics in Virginia**

### **Types of Protective Orders**

#### **Family Abuse Defined**

#### **Emergency Protective Orders**

#### **Preliminary Protective Orders**

#### **Two Year Protective Orders**

#### **Protective Orders with Criminal Conviction**

#### **GDCT Protective Order**





# FAMILY ABUSE PROTECTIVE ORDERS BASICS IN VIRGINIA

## A. **Definitions** - Virginia Code section 16.1-228

“Family abuse”

Any **Act** committed by a person **Against** his/her family or household member **Involving violence, force or threat**, including but not limited to any forceful detention, which **Results in bodily injury** or **Places one in REASONABLE fear of bodily injury**

“Family or household member”

1. spouse or former spouse
2. parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren
3. mother-in-law, father-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law who reside in the same home with the person
4. have a child in common
5. cohabits/cohabited within the past twelve months and their children

## B. **Venue** - Virginia Code section 16.1 – 243(A)(3)

Proceedings in which a Protective Order is sought as a result of family abuse shall be commenced where (i) either party has his or her principal residence; (ii) the abuse occurred or (iii) a protective order was issued if at the time the proceeding is commenced the order is in effect to protect the petitioner or petitioner’s family/household member

## C. **Types of Protective Orders**

1. **Emergency protective order** Virginia Code section 16.1-253.4 – can be issued all day, every day, year round
  - Requested by law enforcement or victim in sworn statement (oral, written, electronically)
    - Issued by magistrate or judge of general district, juvenile and domestic relations, or circuit court upon sworn statement
    - Issued **ex parte**; may be oral or written but if oral shall be reduced to writing by requesting law enforcement officer
    - Grounds:  
Assault and Battery against a family or household member (18.2-57.2) warrant & probable danger of further family abuse  
OR  
Reasonable grounds to believe family abuse occurred & probable danger of further family abuse
    - Prohibits: Further acts of abuse; contact w/victim, family, household members as necessary to protect their safety
    - Grants: Exclusive possession premises (no effect on title)
    - Lasts 72 hours or until 11:59 p.m. the next business day the J&DR Court is in session
    - Effective when respondent personally served; order served on Respondent as soon as possible

- Entered into Virginia Criminal Information Network Service (VCIN) upon receipt by local law enforcement
- Respondent can file a motion to dissolve at any time and hearing on motion is given precedence on the docket
- Violation of no contact and/or no further abuse provisions constitutes contempt of court and Class 1 misdemeanor under 16.1-253.2

2. **Preliminary protective order** Virginia Code section 16.1-253.1

- Requested by victim by written petition alleging family abuse **within a reasonable period of time**
- Petition filed at J&DR court. Intake officer “shall accept” and file petition alleging family abuse and seeking protective order (Virginia Code section 16.1-260)
- Can be issued **ex parte** upon good cause; immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse recently occurred shall constitute good cause
- Issued by judge upon petitioner’s affidavit OR sworn testimony
- Order must state date of full hearing
- Can Prohibit: Further abuse; contact w/family, victim, household members as court deems appropriate; respondent from terminating utilities in the premises or order restoration of utility service that already had been terminated; respondent from terminating a cellular telephone number or electronic device before the expiration of the contract term with a third-party provider; respondent from using a cellular telephone or other electronic device to locate the petitioner
- Can Grant: Exclusive possession of premises (no effect on title); exclusive use and possession of a cellular telephone number or electronic device; temporary exclusive possession or use of a vehicle titled in victim’s name or jointly titled in victim’s and respondent’s names; possession of any companion animal (“any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person”)
- Can Require: The respondent to provide suitable alternative housing for the petitioner and family/household members, including ordering the payment of deposits to connect or restore utility services in the alternative housing
- Lasts 15 days at which time there is a full hearing; the court may continue the hearing beyond the 15 day period upon motion of the respondent and upon good cause, and the PPO shall remain in effect until the hearing

- Entered into VCIN upon receipt by local law enforcement. Date and time of service upon the respondent entered into VCIN once the respondent is served.
- Effective upon personal service on respondent; served as soon as possible
- Respondent can at any time file motion to modify and hearing on motion is given precedence on the docket
- Violation of no abuse, exclusive possession and/or no contact provisions constitutes contempt and Class 1 misdemeanor - Virginia Code section 16.1-253.2

### 3. Full protective order Virginia Code section 16.1-279.1

- Court may issue in cases of family abuse to protect the health and safety of victim and victim's family or household members
- Issued by judge of J&DR court after 15 day "full" evidentiary hearing following PPO
- CANNOT BE ISSUED **EX PARTE**
- Grounds: Virginia Code section 253.1 – At full hearing on petition for PO, court can issue PO if it finds the petitioner has proven the allegation of family abuse by a preponderance of the evidence
- Relief that may be provided is the same as the PPO PLUS
  - a. Order the respondent to participate in treatment, counseling or other programs deemed appropriate by the Court
  - b. Grant temporary custody or visitation of minor child (along with temporary child support, which shall terminate upon determination of support pursuant to section 20-108.1)
  - c. Assess costs and attorney fees against either party
  - d. Any other terms or conditions necessary for the protection of the petitioner and family or household members of the petitioner
 

\*\*\*This provision can be useful in getting respondent ordered to continue to pay for health insurance, mortgage, rent, utilities and (in appropriate cases) providing a car titled only in respondent's name to petitioner
- PO may be issued for specific period, not to exceed two years
- Copy of the PO shall be served on respondent and provided to petitioner as soon as possible
- Either party can at any time file a written motion with the court requesting a hearing to dissolve or modify the order and the motion shall be given precedence on the docket
- The clerk shall forward a copy of the protective order to the local law enforcement who shall enter the respondent's name and other appropriate information into VCIN
- Violation of protective order constitutes contempt and violation of the provisions prohibiting contact and excluding respondent from

the premises constitutes Class 1 misdemeanor (Virginia Code section 16.1-253.2)

- As a district court order, protective orders can be appealed to the circuit court, as can the dismissal of a protective order petition, within ten days of the district court's order. The hearing in circuit court is **de novo**

#### **4. Violations of Protective Orders Personally Served**

Virginia Code section 16.1-253.2

- a. Contempt
- b. Violation of exclusive possession, no contact and/or no further abuse provisions = Class 1 misdemeanor
- c. Second violation if within five years of prior conviction and if the instant or prior offense based on act or threat of violence shall include mandatory minimum of 60 days.
- d. Third or subsequent violation if committed within 20 years of first conviction and if the instant or one of the prior offenses based on act or threat of violence = Class 6 felony and mandatory minimum of 6 months
- e. If armed with firearm or other deadly weapon while violates = Class 6 felony
- f. If the respondent commits A&B upon any party protected by the order, resulting in bodily injury = Class 6 felony
- g. If the respondent violates the order by furtively entering the home of a protected party while the party is present, or by entering and remaining in the home until the party arrives = Class 6 felony
- h. Upon conviction the respondent must serve some time in jail and in addition, the Court shall enter a new PO for up to two years

## THE TYPES OF PROTECTIVE ORDERS

For the most part, petitioners are seeking protective orders either in Juvenile and Domestic Relations District Court (JDR) or General District Court (GDC). We'll explore the differences between these two court processes shortly. But whether we are in JDR or GDC, there are three different variations of protective order depending on function and duration. The first, an **Emergency Protective Order**, lasts only *three days* (technically, 72 hours or until 5:00pm of the next court business if the 72<sup>nd</sup> hour falls outside of regular court business hours) and can be issued at any time outside normal court hours. This option is preferable if a victim feels that a protective order would help, but she needs protection immediately and the local court is not in session.

The second option is a **Preliminary Protective Order**, and it lasts up to *fifteen days* (technically, up to the hearing for the Protective Order). A preliminary order is also the first step toward the third kind of protective order, the **Protective Order**, which is effective for *up to two years*.

Before the fifteen days pass, a court must have a hearing on the matter, in which the respondent must have the opportunity to be heard about the protective order. If the court feels it is appropriate, it can then issue the third option, a **Protective Order** (sometimes referred to as a "full" protective order), which can last up to two years.

### ***Emergency Protective Order (EPO)***

This option exists for victims who need a protective order immediately. Even when this need arises outside of normal court hours, there are options for victims who cannot afford to wait to get the benefits of a protective order. If a victim needs an emergency protective order at any time, she can ask law enforcement to call a magistrate, or she can visit the Office of the Magistrate or JDR in the locality in which the abuse occurred.

See Virginia Code §§ 16.1-253.4, 19.2-152.8.

### ***Preliminary Protective Order (PPO)***

A Preliminary Protective Order, the next step toward a full protective order, can be held without the respondent present. It is valid for up to 15 days, and the judge will schedule a hearing at some point during those 15 days for the court to determine whether a "full" protective order is appropriate.

Second, if the victim wants her petition to be heard without the respondent present (*ex parte*), she has to show "good cause." This means that she must show that there is an immediate and present danger of any act of violence, force, or threat OR evidence sufficient to establish probable cause that an act of violence, force or threat has recently occurred.

See Virginia Code Sections §§ 16.1-253.1, 19.2-152.9.

### ***"Full" Protective Order (PO)***

Once a judge grants a preliminary protective order, a hearing will be scheduled to give the respondent the ability to be heard before any further protections can be put in place. At this hearing,

both sides may produce evidence, and if the victim's evidence proves her case by a preponderance of the evidence, the judge can issue an order lasting up to two years. Unlike a PPO hearing, there is no option for an *ex parte* hearing for a full protective order.

See Virginia Code §§ 16.1-279.1, 19.2-152.10.

### **What to Do if the Respondent Violates an Order:**

A protective order is a civil matter between the victim and the respondent. However, violating a protective order is a crime. If, contrary to prohibitions contained in a protective order, a respondent commits further acts of abuse, contacts the victim, or comes on the land, buildings, or premises of the victim, he has committed a crime, and the victim should call the police.

If the respondent violates a different term of the protective order, he has committed a civil violation. A "show cause" hearing and order is what happens when the court requires somebody to come to court to explain why the court should not take an action requested by somebody else. In the case of protective orders, this means that a victim would ask the court to decide that the abuser violated the order. The abuser would then have to come to court to present his side of the story. Show cause hearings can take some time to schedule and are usually reserved for issues like not abiding by the visitation order, not paying child support on time, etc.

See Virginia Code Section §§ 16.1-253.2, 18.2-60.4.

### ***The Effect of Full Protective Orders on the Respondent's Gun Rights***

Both Federal and Virginia law forbids abusers from buying a gun if a victim has a protective order. Possession of a firearm by a person "who has been convicted in any court of a misdemeanor crime of domestic violence" is prohibited under Virginia law.

- The phrase "misdemeanor crime of domestic violence" is any state or federal misdemeanor that "has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon" and is committed against a family member.
- A common law battery conviction satisfies the definition for a "misdemeanor crime of domestic violence" in 18 U.S.C. § 922(a)(33)(A).

Under Virginia law, a respondent in a "full" Family Abuse Protective Order may not purchase, transport *or possess* a firearm during the course of that protective order EXCEPT for a 24-hour period immediately after service of the PO when they can transfer or otherwise dispose of firearms. Virginia law also makes abusers with concealed handgun permits give them up while the PO is still in effect. This will be stated clearly on the protective order form as a warning to the respondent.

Note: The victim should pay attention to the expiration date of the order. The date should be written on the first page, just above the judge's signature.

## Family Abuse and Non-Family Abuse Protective Orders

There are two meaningful differences between Family Abuse and Non-Family Abuse POs. The first is that all Family Abuse POs are considered and issued by JDR. Those court personnel have more experience dealing with the specific circumstances of problems between family members. The GDC will hear all Non-Family Abuse POs in which neither the victim nor the respondent is a minor. JDR courts will hear all cases in which the victim or the respondent (or both) is a minor, regardless of whether the protective order requested is for Family Abuse or Non-Family Abuse.

The second difference is that Family and Non-Family Abuse POs each have their own distinct forms of relief. The Family Abuse PO can provide relief tailored to fit the distinct needs of victims who have been dependent (economically or otherwise) on their abusers because of the nature of the family structure.

### *One Standard of Abuse:*

The standard of abuse is the same for Family and Non-Family Abuse POs:

An 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.

See Virginia Code §§ 16.1-228, 19.2-152.7:1

### *“Full” Family Abuse Protective Orders*

#### *Who Qualifies?*

A victim may be eligible for a Family Abuse PO if she suffered an act of abuse as defined above **at the hands of a family or household member**. Any victim who has suffered an act of abuse from someone other than a family or household member must ask for a Non-Family Abuse PO.

#### *The “Full” Family Abuse PO Process*

All Family Abuse POs petitions will be heard in JDR. You should go with the victim and help her fill out the forms. If she is asked to answer questions before a judge or magistrate, you should explain the process to her so she does not become overwhelmed.

### ***Relief Available under a “Full” Family Abuse PO***

The relief available for Family Abuse POs reflects the specific needs of victims who may be reliant on their abusers for housing and financial stability. A victim can ask for any of these forms of relief in her petition:

- Prohibit further acts of abuse
- Prohibit criminal offenses that result in injury to person or property
- Prohibit other contact by the respondent with the petitioner, or the petitioner’s family/household members, as the judge or magistrate thinks is necessary for their health and safety
- Give the petitioner temporary possession of a premises
- Grant 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. 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 the petitioner.
- Prevent the respondent from terminating necessary utilities
- Require the respondent to provide suitable alternative housing if the victim cannot continue to stay in the shared residence and requires support from the abusive person
- Require temporary possession and use of a motor vehicle
- Any other relief necessary

See Va. Code §§ 16.1-253.1, 16.1-279.1.

### ***“Full” Non-Family Abuse Protective Orders***

#### ***Who Qualifies***

Any person who has suffered an act of violence, force or threat as described above is eligible for a Non-Family Abuse PO. Because of the privacy afforded in JDR Court, victims may prefer to get Family Abuse POs. However, when a victim is not eligible for a Family Abuse PO, she can still get a Non-Family Abuse PO if the abuse meets the standard explained above.

#### ***The Non-Family Abuse “Full” PO Process***

All Non-Family Abuse PO petitions will be heard in GDC, with one exception. JDR will still hear any petitions in which the petitioner, the respondent, or both, are minors. If both the victim and the abuser are legal adults, the victim needs to go to GDC to fill out forms and submit her petition.

### ***Relief Available under a “Full” Non-Family Abuse PO***

The relief available for Non-Family abuse is geared more toward preventing more incidents of violence, force or threat. The judge or magistrate, if deciding to issue a PO, can give the victim the following relief:



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

See Virginia Code §§ 19.2-152.9, 19.2-152.10.

**Act of Violence, Force, or Threat/Family Abuse**  
An 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.

“Family Abuse” means an act of violence, force, or threat, as defined above, committed by a family and/or household member.

Petitioner is or has been, within a reasonable period of time, subjected to an act of violence.

Family/Household exists between parties

No Relationship Required

**Family Abuse Protective Order**  
**Jurisdiction:** Juvenile and Domestic Relations

**Relief Available:** prohibiting acts of family abuse or criminal offenses that result in injury to person or property; prohibiting contact 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; grant petitioner temporary possession of premises and enjoin respondent from terminating necessary utilities or require respondent to provide suitable alternative housing; temporary possession and use of motor vehicle; other relief necessary.

**Violation:** Class 1 misdemeanor; third or subsequent offense a Class 6 felony; pro-arrest

**Protective Order**  
**Jurisdiction:** General District Court

**Relief Available:** prohibiting acts of violence, force or threat or criminal offenses that result in injury to person or property; prohibiting contact 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; such other conditions as the court deems necessary to prevent (i) acts of violence, force, or threat, (ii) criminal offenses that may result in injury to person or property, or (iii) communication or other contact of any kind by the respondent.

**Violation:** Class 1 misdemeanor; third or subsequent offense a Class 6 felony; pro-arrest

## Family Abuse is defined as:

- 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:

- o Forceful detention
- o Stalking
- o Criminal sexual assault in violation of Article 7 ((§ 18.2-61 et seq.) of Chapter 4 of Title 18.2), or
- o Any criminal offense 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*.

FAMILY OR HOUSEHOLD MEMBER means:

- o the person's *spouse*, whether or not he or she resides in the same home with the person,
- o the person's *former spouse*, whether or not he or she resides in the same home with the person,
- o 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,
- o 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,
- o 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
- o 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.

Code of Virginia §16.1-228 (Family abuse)

**Please note** that a GDC Protective Order requires an "act of violence, force, or threat," which is defined identically to "Family Abuse" EXCEPT that it does not include family or household member.

Code of Virginia §19.2-152.7:1 (Act of violence, force, threat)

**VIRGINIA STANDARD FOR PROTECTIVE ORDER**

# EMERGENCY PROTECTIVE ORDER

Code of Virginia § 16.1-253-4

## **You will not be involved**

- o In virtually all cases the emergency protective order process is one that will take place before your involvement. These are most frequently issued by a magistrate, though a judge may do so.

## **Intended as a Stop-Gap**

- o The purpose of the emergency protective order is to provide the victim with a safe window of opportunity during which she can file for a protective order.

## **Lasts for 72-Hours. . .**

- o ...but it can be extended if the date on which the EPO would expire falls on a date on which the court is not open.

## **Presumption that Warrant = EPO**

- o In cases where a warrant is issued for domestic assault and battery, there is a presumption that an EPO shall also be issued. This presumption can only be rebutted by the allegedly abused person.

## **Limited Remedies**

- o Unlike the other protective orders, EPOs offer very limited remedies:
- o Prohibiting further acts of abuse or other criminal offenses that result in injury to person or property;
- o Prohibiting contact;
- o Exclusive use and possession of residence.

# PRELIMINARY PROTECTIVE ORDERS

Code of Virginia § 16.1-253.1

## Standard

- o Evidence sufficient to establish probable cause that Petitioner was recently subjected to family abuse or immediate and present danger of family abuse within a reasonable time.

## Granted with Petition

- o The preliminary protective order (PPO) may be issued upon the filing of a petition for a protective order. Typically granted the same day the petition is filed without an appearance before the court (though this may change depending on the jurisdiction in which you file) by either the petitioner or an attorney. The PPO may be granted based on the affidavit or sworn testimony.

## Ex Parte

- o PPOs are permitted to be - and almost always will be - issued *ex parte*.

## Starts the Clock

- o PPOs are issued in an *ex parte* proceeding. Because significant rights of the respondent are infringed without his having had an opportunity to be heard, the full hearing on the matter must be heard within **fifteen** days of the issuance of the **PPO**.

## Extension is Limited

- o **PPOs** can be extended when there is a failure of personal service on the Respondent and he doesn't appear or is incarcerated without transport.
- o The PPO can be extended for up to six months for service, but it is only effective once Respondent has been served.

## Continuance is Limited

- o Only the Respondent may ask for a continuance of the full hearing on the protective order, and it shall be granted for good cause shown. The PPO continues until the full hearing takes place.

## Remedies

- o More extensive than an EPO, and roughly parallel to final, two-year PO.

**VIRGINIA STANDARD FOR PROTECTIVE ORDER**

# PRELIMINARY PROTECTIVE ORDERS

Code of Virginia § 16.1-253,1

## What does it mean if a PPO is Denied?

- o The matter is still scheduled for a full hearing, even though the petitioner failed to establish probable cause for the PO. Although it is not required to be scheduled within fifteen days (because there's no PPO in place), it most often is.
- o Petitioner's failure to show probable cause is a **red flag, but it is not always fatal**. Petitioners are often confused, upset, and afraid when going through intake, and most don't have the benefit of legal counsel before filing. Many have limited English or education and their written descriptions are inarticulate. This is often reflected in errors or omissions in the petition or the affidavit, and you may be able to correct these at trial.

**VIRGINIA STANDARD FOR PROTECTIVE ORDER**

# TWO-YEAR PROTECTIVE ORDERS

Code of Virginia § 16.1-279.1

## **NOT ex-parte**

- o Will only be issued after Respondent is served and has an opportunity to be heard.

## **TWO PRONGS**

Before a protective order may be issued, the Petitioner must demonstrate two things:

- o ACT OF FAMILY ABUSE
- o NECESSARY TO PROTECT PETITIONER'S HEALTH AND SAFETY
  - Here, you're really showing the Petitioner's FEAR.

## **NOT PERMANENT ...**

- o People often mistakenly refer to this as a "permanent" protective order, because similar orders are called that in other states. Virginia's protective order lasts up to a maximum of **two years**.

## **•• BUT CAN BE EXTENDED**

- o Can be extended for another two years without any new violence, so long as court finds it necessary to protect health and safety of Petitioner. This can be a deceptively high burden.
- o Petitioner must file a written motion requesting a hearing on the extension before the existing Protective Order expires.

## **PRECEDENCE ON THE DOCKET**

- o Pursuant to the Code of Virginia, protective order hearings are given precedence on the docket. The time allotted in jurisdictions will vary. Alexandria, for example, has no set amount of time, while Fairfax sets each for 30 minutes.

## **ATTORNEY'S FEES AUTHORIZED**

- o Attorney's fees are specifically authorized for either party regardless of whether the order has been issued.

## **VIRGINIA STANDARD FOR PROTECTIVE ORDER**

## PROTECTIVE ORDER WITH CRIMINAL CONVICTION

- ✓ In cases involving the violation of any law, regulation or ordinance
  - for the education, protection or care of children **or**
  - involving offenses committed by one family or household member against another,
- ✓ the juvenile court or the circuit court
  - may impose a penalty prescribed by applicable sections of the Code **and**
  - may impose conditions and limitations upon the defendant **to protect the health or safety of family or household members**, including, but not limited to,
    - **a protective order as provided in §16.1-279.1**,
    - treatment and counseling for the defendant, and
    - payment by the defendant for crisis shelter care for the complaining family or household member.

Code of Virginia §16.1-278.14 {Criminal jurisdiction; protective orders; family offenses}

**What it means:** Prosecutors can ask for a two-year protective order to be entered as part of the criminal sentence for, say, Assault & Battery of a Family Member.

**VIRGINIA STANDARD FOR PROTECTIVE ORDER**



## A (GDC) Protective Order can:

- ✓ **Prohibit acts of violence, force, or threat**, or criminal offenses that may result in injury to *person or property*;
- ✓ **Prohibit contact** 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;
- ✓ **Grant any other relief necessary** to prevent (i) acts of violence, force, or threat, (ii) criminal offenses that may result in injury to person or property, or (iii) communication or other contact of any kind by the respondent; and
- ✓ **Grant 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.
- ✓ Last for a specified period of time up to a maximum of two years, renewable for periods of up to two years.
- ✓ Violation shall constitute contempt of court.  
\*Except as provided in §18.2-60-4

Code of Virginia §19.2-152.10 (Protective Order)









 **YOU AND THE LAW**

*Legal and Social Tools for Assisting  
Survivors of Violence*

Notes

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