

# 8

## JUDICIAL PROCEEDINGS

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# 8

## JUDICIAL PROCEEDINGS

### 8.1 Introduction

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This section describes some of the judicial proceedings regarding child abuse or neglect. It is imperative that local departments (LDSS) seek legal counsel and advice when seeking court intervention in a CPS referral or ongoing case.

Text that is indented and denoted with a blue vertical line is verbatim from the Code of Virginia or the Virginia Administrative Code.

### 8.2 Emergency removal order

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(§ [16.1-251 A](#) of the Code of Virginia). Emergency Removal Order.

A. A child may be taken into immediate custody and placed in shelter care pursuant to an emergency removal order in cases in which the child is alleged to have been abused or neglected.

The Virginia Administrative Code authorizes a CPS worker to petition the court to request an order to remove a child:

([22 VAC 40-705-100 A](#)). A child protective services worker may petition for removal pursuant to §§ [16.1-251](#) and [16.1-252](#) of the Code of Virginia.

The LDSS must work closely with the county or city attorney and the juvenile and domestic relations district court to develop protocols for these actions.

It is important and necessary for the LDSS to obtain legal counsel prior to petitioning for the removal of a child. The evidence supporting the decision to seek court intervention must be well documented in the case record. When an LDSS petitions a court for an

emergency removal order, the LDSS may be referred to as the petitioner during the proceedings.

### 8.2.1 Ex parte emergency removal order

(§ [16.1-251 A](#) of the Code of Virginia). [An Emergency Removal Order]... may be issued ex parte by the court upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer . . .

Ex parte is defined as “done or made at the insistence and for the benefit of one party only, without notice or argument by, any person adversely interested.”<sup>1</sup> Essentially, an ex parte hearing allows the court to conduct a hearing without the presence of one of the parties because the situation demands immediate action or irreparable harm will likely occur. An emergency removal order may be issued ex parte by the court upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer. If a court enters an emergency removal order, a preliminary removal hearing must occur **no later than five (5) business days** after the removal.

#### 8.2.1.1 Petition for an emergency removal order must allege child is abused or neglected

In order to request an emergency removal order, the LDSS must file a petition requesting removal. The petition requesting removal of the child must allege that the child is abused or neglected.

### 8.2.2 Affidavit or sworn testimony must accompany petition

The worker will be required to submit an affidavit or to present sworn testimony to prove that the case meets the criteria set forth for removing a child from the home. Competent evidence by a physician that a child is abused or neglected is considered adequate to support this type of petition.

### 8.2.3 Affidavit or sworn statement in support of emergency removal order

#### 8.2.3.1 The petition, affidavit, or sworn statement must specify the factual circumstances warranting removal

The petition or accompanying affidavit must contain a specific statement or account of the factual circumstances necessitating the removal of the child.

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<sup>1</sup> Black’s Law Dictionary 657 (9th ed. 2009).

### **8.2.3.2 Evidence must establish an immediate threat to life or health of the child**

(§ [16.1-251 A1](#) of the Code of Virginia). [The petition, affidavit or sworn testimony must establish that] The child would be subjected to an imminent threat to life or health to the extent that severe or irremediable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition.

The circumstances of the child are such that remaining with the parent, legal guardian, or caretaker presents an imminent danger to the child's life or health.

### **8.2.3.3 Petition, affidavit, or sworn testimony must show reasonable efforts to prevent removal**

(§ [16.1-251 A2](#) of the Code of Virginia). [The petition, affidavit or sworn testimony must establish that] ... reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home which could reasonably protect the child's life or health pending a final hearing on the petition...

Removal of a child should only occur after consideration of alternatives to out-of-home placement. The court must be presented with an affidavit or sworn testimony establishing that reasonable efforts have been made to prevent removal of the child from his home.

### **8.2.3.4 Petition, affidavit, or sworn testimony must show no alternatives less drastic than removal**

(§ [16.1-251 A2](#) of the Code of Virginia). [The petition, affidavit or sworn testimony must establish that]... there are no alternatives less drastic than removal of the child from his home which could reasonably protect the child's life or health pending a final hearing on the petition.

The safety of the child precludes provision of services to prevent placement because there are no alternatives less drastic than removal that could reasonably protect the child's life or health.

#### **8.2.3.4.1 Alternatives less drastic than removal**

(§ [16.1-251 A2](#) of the Code of Virginia). [The petition, affidavit or sworn testimony must establish that]... the alternatives less drastic than removal may include but not be limited to the provision of medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order pursuant to § [16.1-253](#).

#### 8.2.3.5 No opportunity to provide preventive services

(§ [16.1-251 A2](#) of the Code of Virginia). ...when a child is removed from his home and there is no reasonable opportunity to provide preventive services, reasonable efforts to prevent removal shall be deemed to have been made.

Circumstances may occur when there is no reasonable opportunity to provide preventive services before removing a child from the home.

#### 8.2.3.6 Petition or affidavit must include the following facts

The petition shall include the following facts:

- The name of the person who took emergency custody, the person's professional capacity, and the telephone number where the person can be reached.
- The child's name and birth date.
- The names of parents or guardians.
- The present or last known address of parents or guardians.
- A detailed description of the child's condition.
- Any information known concerning the circumstances of the suspected abuse or neglect, including the petitioner's name and the nature of the complaint.
- A brief explanation of the reasons why preventive services were not successful or could not be delivered.
- The specific time and date emergency custody was taken.
- Documentation of the petitioning person's efforts to obtain a court order.

#### 8.2.3.7 CPS worker shall consult with supervisor and must consult foster care worker

Whenever a worker considers removal of a child, supervisory consultation and concurrence is required. When petitioning the court for removal of the child is seen as the only alternative, the worker must involve the foster care worker in staffing the case. The focus of the staffing shall be to assess whether or not there are any alternatives to removal. Evaluation shall be made of the resources available to meet the needs of the family and the specific child who is to be placed.



#### 8.2.4 Five-day hearing must occur following emergency removal order

(§ [16.1-251 B](#) of the Code of Virginia). Whenever a child is taken into immediate custody pursuant to an emergency removal order, a hearing shall be held in accordance with § [16.1-252](#) as soon as practicable, but in no event later than five business days after the removal of the child.

#### 8.2.5 Suitable relatives shall be considered for placement

(§ [16.1-251 C](#) of the Code of Virginia). In the emergency removal order the court shall give consideration to temporary placement of the child with a suitable relative or other interested individual, including grandparents, under the supervision of the local department of social services, until such time as the hearing in accordance with § [16.1-252](#) is held.

#### 8.2.6 When LDSS has legal custody of child

(§ [16.1-251 D](#) of the Code of Virginia). The local department of social services having legal custody of a child as defined in (§ [16.1-228 i](#)) shall not be required to comply with the requirements of this section in order to redetermine where and with whom the child shall live, notwithstanding that the child had been placed with a natural parent.

This section of the Code of Virginia means the presumption that it is in the best interest of the child to remain with his parents or guardians no longer exists, unless the child was placed in the custody of a natural parent. For example, if the LDSS has been given legal custody of a child as defined in § [16.1-228](#), then the LDSS will not be required to comply with the requirements of this section in order to redetermine where and with whom the child shall live.

§ [16.1-228](#) of the Code of Virginia defines legal custody as meaning “(i) a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and redetermine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in § [20-107.2](#).”

### 8.3 Preliminary removal order

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(§ [16.1-252 A](#) of the Code of Virginia). A preliminary removal order in cases in which a child is alleged to have been abused or neglected may be issued by the court after a hearing wherein the court finds that reasonable efforts have been made to prevent removal of the child from his home. The hearing shall be in the nature of a preliminary hearing rather than a final determination of custody.

This order may be requested when the LDSS can prove that the circumstances of the child are such that the child is subject to severe or irremediable injury to his life or health and that no less drastic alternatives to removing custody are available. This order differs from the emergency removal order in that a hearing must take place before a preliminary removal order can be issued.

#### 8.3.1 Service worker shall consult with supervisor and foster care worker

Whenever a worker considers removing a child, supervisory consultation and concurrence is required. When petitioning the court for removal of the child is seen as the only alternative, the CPS worker or service worker shall involve the foster care worker in staffing the case. The focus of the staffing shall be to assess whether or not there are any additional alternatives to removal. Evaluation shall be made of the resources available to meet the needs of the family and the specific child who is to be placed.

#### 8.3.2 Notice shall be given to all parties

(§ [16.1-252 B](#) of the Code of Virginia). Prior to the removal hearing, notice of the hearing shall be given at least twenty-four hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian or other person standing in loco parentis of the child and to the child if he or she is twelve years of age or older. If notice to the parents, guardian, legal custodian or other person standing in loco parentis cannot be given despite diligent efforts to do so, the hearing shall be held nonetheless, and the parents, guardian, legal custodian or other person standing in loco parentis shall be afforded a later hearing on their motion regarding a continuation of the summary removal order. The notice provided herein shall include (i) the time, date and place for the hearing; (ii) a specific statement of the factual circumstances which allegedly necessitate removal of the child; and (iii) notice that child support will be considered if a determination is made that the child must be removed from the home.

Notice shall be sent to the parents, guardian, legal custodian, or other person standing in loco parentis. In loco parentis means, "of, relating to, or acting as a

temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent.”<sup>2</sup>

#### **8.3.2.1 If notice cannot be provided**

Diligent efforts must be made to provide all parties with notice of the hearing. However, if notice to any of the parties cannot be given despite diligent efforts to do so, the hearing shall be held. The parents, guardian, legal custodian, or other person standing in loco parentis shall be afforded a later hearing on their motion regarding a continuation of the summary removal order.

#### **8.3.2.2 Notice shall include specific information**

The notice provided to the parties shall state:

- The time, date, and place for the hearing.
- A specific statement of the factual circumstances which allegedly necessitate removal of the child.
- Notice that child support will be considered if a determination is made that the child shall be removed from the home.

#### **8.3.3 Parties may obtain counsel**

(§ [16.1-252 C](#) of the Code of Virginia). All parties to the hearing shall be informed of their right to counsel pursuant to § [16.1-266](#).

Prior to the preliminary removal hearing by the court of any case involving a parent, guardian or other adult charged with abuse or neglect of a child or a parent or guardian who could be subjected to the loss of residual parental rights and responsibilities, such parent, guardian, or other adult shall be informed by a judge, clerk, or probation officer of his right to counsel and be given an opportunity to:

- Retain counsel; or
- If the court determines that the parent, guardian or other adult is indigent or qualified, the court may appoint counsel; or
- Waive the right to representation by an attorney.

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<sup>2</sup> Black’s Law Dictionary 858 (9th ed. 2009).

### 8.3.4 Preliminary removal hearing

The preliminary removal hearing will be conducted in the nature of a preliminary hearing rather than a final determination of custody.

### 8.3.5 For a preliminary removal order to be issued, burden is on the requesting party

The burden to prove that the court should issue the preliminary removal order is placed upon the petitioning party. If the LDSS is the party asking the court to issue the order, then the burden is on the LDSS to prove the need to issue the order. The CPS worker must file a petition requesting a preliminary removal order, which includes a specific statement of the factual circumstances necessitating the removal of the child.

#### 8.3.5.1 Burden of proof – preponderance of the evidence

Each criterion for establishing the need to issue a preliminary removal order must be satisfied by a preponderance of the evidence.<sup>3</sup>

#### 8.3.5.2 Requesting party must prove imminent threat to life or health of child

(§ [16.1-252 E1](#) of the Code of Virginia). In order for a preliminary order to issue or for an existing order to be continued, the petitioning party or agency must prove: 1. The child would be subjected to an imminent threat to life or health to the extent that severe or irremediable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition;

#### 8.3.5.3 Reasonable efforts must have been made to prevent removal

(§ [16.1-252 E2](#) of the Code of Virginia). In order for a preliminary order to issue or for an existing order to be continued, the petitioning party or agency must prove: 2. Reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home which could reasonably and adequately protect the child's life or health pending a final hearing on the petition...

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<sup>3</sup> See: *Wright v. Arlington County Dept. of Social Services*, 9 Va. App. 411, 388 S.E.2d 477 (1990).

#### 8.3.5.4 No alternatives less drastic than removal

(§ [16.1-252 E2](#) of the Code of Virginia). ... the alternatives less drastic than removal may include but not be limited to the provision of medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order pursuant to § [16.1-253](#).

The alternatives less drastic than removal include providing medical, educational, psychiatric, psychological, homemaking, or other similar services to the child or family or the issuance of a preliminary protective order pursuant to § [16.1-253](#).

#### 8.3.5.5 No reasonable opportunity to provide services

Circumstances may occur when there is no reasonable opportunity to provide preventive services before removing a child from the home. When there is no opportunity to provide preventive services before removing a child, the court has the authority to deem that reasonable efforts to prevent removal were made by the LDSS.

#### 8.3.6 The preliminary removal hearing

In the hearing, petitioner must prove:

- The child would be subjected to imminent threat to his life or health if the child remained with the caretaker.
- Such circumstances would result in severe and irreparable injury to the child.
- The provision of services to prevent placement was not successful or services to prevent placement could not be given or delivered, and there are no alternatives less drastic than removal which could reasonably protect the child's life and health.

##### 8.3.6.1 Parties may present witnesses and evidence

(§ [16.1-252 D](#) of the Code of Virginia). At the removal hearing the child and his parent, guardian, legal custodian or other person standing in loco parentis shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf ...

##### 8.3.6.2 Testimony of the child may be taken by closed-circuit television

(§ [16.1-252 D](#) of the Code of Virginia). ...If the child was fourteen years of age or under on the date of the alleged offense and is sixteen or under at the time of the

hearing, the child's attorney or guardian ad litem, or if the child has been committed to the custody of the Department of Social Services, the local department of social services, may apply for an order from the court that the child's testimony be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The provisions of [§ 63.2-1521](#) shall apply, mutatis mutandis, to the use of two-way closed-circuit television except that the person seeking the order shall apply for the order at least forty-eight hours before the hearing, unless the court for good cause shown allows the application to be made at a later time.

A child, 14 or under at the time of the alleged incident, may testify under certain conditions as determined by the court in any civil proceeding involving allegations of abuse and neglect of that child. By motion of a party, the child's testimony may be taken by closed-circuit television, if the court finds that the child cannot testify in open court in the presence of the alleged abuser or neglecter for the following reasons:

- The child's persistent refusal to testify despite judicial request to do so;
- The child's substantial inability to communicate about the offense; or
- The substantial likelihood, based on expert opinion testimony, that the child will suffer severe emotional trauma as a result of testifying.

### **8.3.7 If court orders removal, court must determine who shall have custody of the child**

([§ 16.1-252 F1](#) of the Code of Virginia). Prior to the entry of an order pursuant to subsection F of this section transferring temporary custody of the child to a relative or other interested individual, including grandparents, the court shall consider whether the relative or other interested individual is one who (i) is willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; and (iii) is willing and has the ability to protect the child from abuse and neglect. The court's order transferring temporary custody to a relative or other interested individual should provide for compliance with any preliminary protective order entered on behalf of the child in accordance with the provisions of [§ 16.1-253](#); initiation and completion of the investigation as directed by the court and court review of the child's placement required in accordance with the provisions of [§ 16.1-278.2](#); and, as appropriate, ongoing provision of social services to the child and the temporary custodian.

If the court determines that the child shall be removed pursuant to [§ 16.1-252 E](#), then the court must determine with whom the child shall be placed. The court must place the child in the care and custody of a suitable person. The court must give consideration to placing the child in the care and custody of a nearest kin, including

grandparents or personal friend. If such placement is not available, then the court may place the child in the care and custody of a suitable agency.

#### **8.3.7.1 If court orders removal, court may provide for reasonable visitation**

(§ [16.1-252 F2](#) of the Code of Virginia). [If the court determines that removal is proper, the court shall] Order that reasonable visitation be allowed between the child and his parents, guardian, legal custodian or other person standing in loco parentis, and between the child and his siblings, if such visitation would not endanger the child's life or health;

If the court finds that the child must be removed pursuant to § [16.1-252 E](#), the court shall determine whether reasonable visitation should be allowed between the child and his parents, guardian, legal custodian, or other person standing in loco parentis, and between the child and his siblings. The court may allow reasonable visitation only if such visitation would not endanger the child's life or health.

#### **8.3.7.2 If court orders removal, court shall obtain child support**

(§ [16.1-252 F3](#) of the Code of Virginia). [If the court determines that removal is proper, the court shall] Order that the parent or other legally obligated person pay child support pursuant to § [16.1-290](#).

If the court finds that the child must be removed pursuant to § [16.1-252 E](#), the court shall order that the parent or person legally obligated for the child pay child support.

The court is required by § [16.1-290 C](#) to require that the parent or other person legally responsible for the child pay child support.

If a determination is made that the child must be removed from the home, then the LDSS must file a separate petition for child support as soon as practicable. To facilitate the requirement that the court order child support at the initial hearing, it is recommended that the worker request that the petition requesting removal of the child include a statement that if custody is transferred, the petitioner requests that the court address parental child support as defined in § [63.2-909](#).

(§ [16.1-290](#) of the Code of Virginia). C. Whenever a juvenile is placed in foster care by the court, the court shall order and decree that the parents shall pay the Department of Social Services pursuant to §§ [20-108.1](#), [20-108.2](#), [63.2-909](#), and [63.2-1910](#).



(§ [63.2-909](#) of the Code of Virginia). Pursuant to § [16.1-290](#), responsible persons shall pay child support for a child placed in foster care from the date that custody was awarded to the local department of social services. The court order shall state the names of the responsible persons obligated to pay support, and either specify the amount of the support obligation pursuant to §§ [20-108.1](#) and [20-108.2](#) or indicate that the Division of Child Support Enforcement will establish the amount of the support obligation. In fixing the amount of support, the court or the Division of Child Support Enforcement shall consider the extent to which the payment of support by the responsible person may affect the ability of such responsible person to implement a foster care plan developed pursuant to § [16.1-281](#).

#### **8.3.7.3 Court may impose additional requirements or conditions**

(§ [16.1-252 F](#) of the Code of Virginia). ...In addition, the court may enter a preliminary protective order pursuant to § [16.1-253](#) imposing requirements and conditions as specified in that section which the court deems appropriate for protection of the welfare of the child.

#### **8.3.8 Court shall make finding of abuse or neglect**

(§ [16.1-252 G](#) of the Code of Virginia). At the conclusion of the preliminary removal order hearing, the court shall determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order...

##### **8.3.8.1 A party may object to the court making a finding of abuse or neglect**

(§ [16.1-252 G](#) of the Code of Virginia). ...However, if, before such a finding is made, a person responsible for the care and custody of the child, the child's guardian ad litem or the local department of social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory hearing to be held within thirty days of the date of the initial preliminary removal hearing...

##### **8.3.8.2 Adjudicatory hearing**

(§ [16.1-252 G](#) of the Code of Virginia). ...The adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been proven by a preponderance of the evidence.

At the adjudicatory hearing, the court shall make a finding of abuse or neglect. It is not necessary to determine the perpetrator of the abuse or neglect in order to make a finding of abuse or neglect.



#### 8.3.8.3 Notification of adjudicatory hearing

(§ [16.1-252 G](#) of the Code of Virginia). ...Parties who are present at the preliminary removal order hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present shall be summoned as provided in § [16.1-263](#). The hearing shall be held and an order may be entered, although a party to the preliminary removal order hearing fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort...

#### 8.3.8.4 Any preliminary removal order or protection orders remain in effect pending adjudicatory hearing

(§ [16.1-252 G](#) of the Code of Virginia). ...The preliminary removal order and any preliminary protective order issued shall remain in full force and effect pending the adjudicatory hearing.

If a party raises an objection at the preliminary removal hearing to the court making a finding of abuse or neglect, the court may still issue a preliminary removal order or a preliminary protective order. The preliminary removal order and any preliminary protective order issued shall remain in full force and effect pending the adjudicatory hearing.

#### 8.3.8.5 Dispositional hearing

(§ [16.1-252 H](#) of the Code of Virginia). If the preliminary removal order includes a finding of abuse or neglect and the child is removed from his home or a preliminary protective order is issued, a dispositional hearing shall be held pursuant to § [16.1-278.2](#)...

Regardless of whether the court makes a finding of abuse or neglect at the preliminary removal hearing, the court shall schedule a dispositional hearing pursuant to § [16.1-278.2](#).

#### 8.3.8.6 Scheduling the dispositional hearing

(§ [16.1-252 H](#) of the Code of Virginia). ...The dispositional hearing shall be scheduled at the time of the preliminary removal order hearing and shall be held within seventy-five days of the preliminary removal order hearing. If an adjudicatory hearing is requested pursuant to subsection G, the dispositional hearing shall nonetheless be scheduled at the initial preliminary removal order hearing. All parties present at the preliminary removal order hearing shall be given

notice of the date scheduled for the dispositional hearing; parties who are not present shall be summoned to appear as provided in § [16.1-263](#).

### 8.3.9 Person gaining legal custody of child

(§ [16.1-252 I](#) of the Code of Virginia). The local department of social services having legal custody of a child as defined in § [16.1-228 i](#) shall not be required to comply with the requirements of this section in order to redetermine where and with whom the child shall live, notwithstanding that the child had been placed with a natural parent.

This section means the presumption that it is in the best interests of the child to remain with his parents or guardians no longer exists, unless the child was placed in the custody of a natural parent. For example, if the LDSS has been given legal custody of a child as defined in § [16.1-228](#), then the LDSS will not be required to comply with the requirements of this section in order to redetermine where and with whom the child shall live.<sup>4</sup> This means that when the LDSS has legal custody of a child, it can move the child from the home of a natural parent and can change the child's placement without having to comply with the preliminary removal statute.

### 8.3.10 Violation of order constitutes contempt of court

(§ [16.1-252 J](#) of the Code of Virginia). Violation of any order issued pursuant to this section shall constitute contempt of court.

## 8.4 Preliminary protective order

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([22 VAC 40-705-100 B](#)). A child protective services worker may petition for a preliminary protective order pursuant § [16.1-253](#) of the Code of Virginia.

### 8.4.1 Purpose of preliminary protective order

(§ [16.1-253 A](#) of the Code of Virginia). Upon the motion of any person or upon the court's own motion, the court may issue a preliminary protective order, after a hearing, if necessary to protect a child's life, health, safety or normal development pending the final determination of any matter before the court...

This order may be requested when it is not necessary to assume custody of the child, but court intervention is necessary. The court may intervene to assure that a

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<sup>4</sup> Virginia Code § [16.1-228](#) defines legal custody as meaning “(i) a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and redetermine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in § [20-107.2](#).”

child's parent or person responsible for the child's care observe reasonable conditions of behavior in order to preserve the child's life, health and safety, and to maintain the child in his or her own home.

#### **8.4.2 The court's authority**

(§ [16.1-253 A](#) of the Code of Virginia). ...The order may require a child's parents, guardian, legal custodian, other person standing in loco parentis or other family or household member of the child to observe reasonable conditions of behavior for a specified length of time...

##### **8.4.2.1 The court may order person to abstain from offensive conduct**

(§ [16.1-253 A1](#) of the Code of Virginia). To abstain from offensive conduct against the child, a family or household member of the child or any person to whom custody of the child is awarded;

##### **8.4.2.2 The court may order services**

(§ [16.1-253 A2](#) of the Code of Virginia). To cooperate in the provision of reasonable services or programs designed to protect the child's life, health or normal development;

##### **8.4.2.3 The court may order home visits**

(§ [16.1-253 A3](#) of the Code of Virginia). To allow persons named by the court to come into the child's home at reasonable times designated by the court to visit the child or inspect the fitness of the home and to determine the physical or emotional health of the child;

##### **8.4.2.4 The court may order visitation with the child**

(§ [16.1-253 A4](#) of the Code of Virginia). To allow visitation with the child by persons entitled thereto, as determined by the court;

##### **8.4.2.5 The court may order person to refrain from certain acts**

(§ [16.1-253 A5](#) of the Code of Virginia). To refrain from acts of commission or omission which tend to endanger the child's life, health or normal development; or ...

#### 8.4.2.6 The court may order person to have no contact with child or family

(§ [16.1-253 A6](#) of the Code of Virginia). To refrain from such contact with the child or family or household members of the child, as the court may deem appropriate, including removal of such person from the residence of the child. However, prior to the issuance by the court of an order removing such person from the residence of the child, the petitioner must prove by a preponderance of the evidence that such person's probable future conduct would constitute a danger to the life or health of such child, and that there are no less drastic alternatives which could reasonably and adequately protect the child's life or health pending a final determination on the petition.

The court may limit contact between the alleged abusive person and the child and the family or household members of the child. The court can remove a person from the residence. In order to remove a person from the residence, the court must find that a preponderance of the evidence establishes that the person's probable conduct in the future constitutes a danger to the life or health of the child. The court must also find, by a preponderance of the evidence, that there are no less drastic alternatives which could reasonably and adequately protect the child's life or health pending a final determination on the petition.

#### 8.4.3 Requesting a preliminary protective order

(§ [16.1-253 B](#) of the Code of Virginia). A preliminary protective order may be issued ex parte upon motion of any person or the court's own motion in any matter before the court, or upon petition. The motion or petition shall be supported by an affidavit or by sworn testimony in person before the judge or intake officer which establishes that the child would be subjected to an imminent threat to life or health to the extent that delay for the provision of an adversary hearing would be likely to result in serious or irreparable injury to the child's life or health. If an ex parte order is issued without an affidavit being presented, the court, in its order, shall state the basis upon which the order was entered, including a summary of the allegations made and the court's findings. Following the issuance of an ex parte order the court shall provide an adversary hearing to the affected parties within the shortest practicable time not to exceed five business days after the issuance of the order.

A preliminary protective order can be requested by making a motion during any matter before the court or by filing a petition. The court may issue the preliminary protective order ex parte.

#### 8.4.3.1 Motion or petition must establish imminent threat

Any motion or petition shall be supported by an affidavit or by sworn testimony in person before the judge or intake officer. The testimony or petition must establish that the child would be subjected to an imminent threat to life or health to the extent that any delay would be likely to result in serious or irreparable injury to the child's life or health.

#### 8.4.3.2 Ex parte preliminary protective order

A preliminary protective order may be issued ex parte by the court upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer. Ex parte is defined as "Done or made at the insistence and for the benefit of one party only, without notice or argument by, any person adversely interested."<sup>5</sup> Essentially, an ex parte hearing allows the court to conduct a hearing without the presence of one of the parties because the situation demands immediate action or irreparable harm will likely occur. If an ex parte order is issued without an affidavit being presented, the court must state the basis upon which the order was entered in the order. The preliminary protective order shall also include a summary of the allegations made and the court's findings.

#### 8.4.3.3 Adversary hearing shall occur within five days of issuance of ex parte order

If a court enters a preliminary protective order ex parte, the court shall provide an adversary hearing within the shortest practicable time **not to exceed five (5) business days** after the issuance of the order.

#### 8.4.4 Notice of hearing shall be given

(§ [16.1-253 C](#) of the Code of Virginia). Prior to the hearing required by this section, notice of the hearing shall be given at least twenty-four hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian, or other person standing in loco parentis of the child, to any other family or household member of the child to whom the protective order may be directed and to the child if he or she is twelve years of age or older. The notice provided herein shall include (i) the time, date and place for the hearing and (ii) a specific statement of the factual circumstances which allegedly necessitate the issuance of a preliminary protective order.

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<sup>5</sup> Black's Law Dictionary 858 (9th ed. 2009).

#### 8.4.5 Right to counsel

(§ [16.1-253 D](#) of the Code of Virginia). All parties to the hearing shall be informed of their right to counsel pursuant to § [16.1-266](#).

Prior to the preliminary protective order hearing by the court of any case involving a parent, guardian, or other adult charged with abuse or neglect of a child or a parent or guardian who could be subjected to the loss of residual parental rights and responsibilities, such parent, guardian, or other adult shall be informed by a judge, clerk, or probation officer of his right to counsel and be given an opportunity to:

- Retain counsel; or
- If the court determines that the parent, guardian, or other adult is indigent or qualified, the court may appoint counsel; or
- Waive the right to representation by an attorney.

#### 8.4.6 Right to present witnesses and cross-examination

(§ [16.1-253 E](#) of the Code of Virginia). At the hearing the child, his or her parents, guardian, legal custodian or other person standing in loco parentis and any other family or household member of the child to whom notice was given shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf.

The LDSS may present evidence to establish the need for the protective order to be issued. That evidence may include witnesses, medical reports, or any other evidence relevant to the subject matter. The parties to the proceeding maintain the right to cross-examine all adverse witnesses and evidence and to present evidence on their own behalf.

#### 8.4.7 If the preliminary protective order petition alleges abuse or neglect, then the court shall make finding of abuse or neglect

(§ [16.1-253 F](#) of the Code of Virginia). If a petition alleging abuse or neglect of a child has been filed, at the hearing pursuant to this section the court shall determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order. However, if, before such a finding is made, a person responsible for the care and custody of the child, the child's guardian ad litem or the local department of social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory hearing to be held within thirty days of the date of the initial preliminary protective order hearing. The adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been proven by a preponderance of the evidence. Parties who are present at

the hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present shall be summoned as provided in § [16.1-263](#). The adjudicatory hearing shall be held and an order may be entered, although a party to the hearing fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort.

Any preliminary protective order issued shall remain in full force and effect pending the adjudicatory hearing.

If the petition requesting the issuance of a protective order alleges that the child was abused or neglected, then the court shall make a determination whether the child was abused or neglected. The court shall make that finding during the adversary hearing and based upon a preponderance of the evidence. Any finding of abuse shall be stated in the court order.

#### **8.4.7.1 A party may object to the court making a finding of abuse or neglect**

At the preliminary protective order hearing, any party (a person responsible for the care and custody of the child, the child's guardian ad litem or the LDSS) may object to the court making a finding of abuse or neglect.

#### **8.4.7.2 If a party objects to the court making a finding of abuse or neglect**

If one of the parties objects to the court making a finding of abuse or neglect, then the court shall schedule an adjudicatory hearing to determine whether the allegations of abuse or neglect have merit. The adjudicatory hearing shall be scheduled **within 30 days** of the date of the initial preliminary hearing.

#### **8.4.7.3 Purpose of adjudicatory hearing**

The adjudicatory hearing will be held to determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence.

#### **8.4.7.4 Notice for adjudicatory hearing**

The court must provide notice and schedule the adjudicatory hearing during the preliminary removal order hearing while all parties are present. Those parties who are not present for the preliminary removal hearing shall be summoned as provided in § [16.1-263](#). Pursuant to § [16.1-253 F](#), if proper notice has been provided or attempted and a party fails to appear for the adjudicatory hearing,



the court may conduct the hearing and make a finding of abuse or neglect without that party present.

#### 8.4.7.5 Court order carries full force and effect

If the court issued a preliminary protective order, the preliminary protective order remains in effect pending the adjudicatory hearing. An objection to the court making a finding of abuse or neglect does not stay the preliminary protective order.

#### 8.4.8 Dispositional hearing

(§ [16.1-253 G](#) of the Code of Virginia). If at the preliminary protective order hearing held pursuant to this section the court makes a finding of abuse or neglect and a preliminary protective order is issued, a dispositional hearing shall be held pursuant to § [16.1-278.2](#). ...The dispositional hearing shall be scheduled at the time of the hearing pursuant to this section, and shall be held within seventy-five days of this hearing. If an adjudicatory hearing is requested pursuant to subsection F, the dispositional hearing shall nonetheless be scheduled at the hearing pursuant to this section. All parties present at the hearing shall be given notice of the date and time scheduled for the dispositional hearing; parties who are not present shall be summoned to appear as provided in § [16.1-263](#).

If there is no objection to the court making a finding of abuse or neglect, then the court should schedule a dispositional hearing to be conducted within 75 days of the date of the initial preliminary hearing.

##### 8.4.8.1 Scheduling and notice for dispositional hearing

Scheduling of the hearing and notice to all parties will be made during the initial preliminary hearing. If an objection to a finding of abuse or neglect is made by a party to the proceeding, then the court shall schedule an adjudicatory hearing to be held **within 30 days** of the initial preliminary hearing.

#### 8.4.9 Preliminary protective order cannot remove custody from parents or guardians

(§ [16.1-253 H](#) of the Code of Virginia). Nothing in this section enables the court to remove a child from the custody of his or her parents, guardian, legal custodian or other person standing in loco parentis, except as provided in § [16.1-278.2](#), and no order hereunder shall be entered against a person over whom the court does not have jurisdiction.

A preliminary protective order cannot be used to remove custody of a child from the child's parents, guardian, legal custodian, or other person standing in loco parentis.



#### 8.4.10 Violation of preliminary protective order constitutes contempt of court

(§ [16.1-253 J](#) of the Code of Virginia). Violation of any order issued pursuant to this section shall constitute contempt of court.

### 8.5 Petition for child support

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([22 VAC 40-705-100 C](#)). Whenever the local department assumes custody of a child under subsection A or B of this section, a child protective services worker shall petition the court for parental child support.

At the initial hearing whenever custody of a child is removed (except in emergency removal order hearings) the court is required to order the parents to pay child support.

- To facilitate the requirement that the court order child support at the initial hearing, it is recommended that the worker include in the petition requesting custody of the child a statement that, if custody is transferred, the petitioner requests the court to address parental child support as defined in Code of Virginia § [63.2-909](#).
- The CPS worker is encouraged to discuss this aspect of the removal process with parents; the worker may wish to discuss the parents' financial status with them to help determine whether the court should be requested to exempt them from a support obligation.

### 8.6 Immunity from civil or criminal liability

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([22 VAC 40-705-100 D](#)). Any person who participates in a judicial proceeding resulting from making a child protective services report or complaint or from taking a child into custody pursuant to §§ [63.2-1509](#), [63.2-1510](#), and [63.2-1517](#) of the Code of Virginia, shall be immune from any civil or criminal liability in connection therewith unless it is proven that such person acted in bad faith or with malicious intent pursuant to § [63.2-1512](#) of the Code of Virginia.

## 8.7 Appendix A: Preliminary protective orders in cases of family abuse

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Code of Virginia sections §§ [16.1-253.1](#) (Preliminary protective orders in cases of family abuse), [16.1-253.4](#) (Emergency protective orders authorized in certain cases), and [16.1-279.1](#) (Protective orders in cases of family abuse) are incorporated into the policy manual for reference. The purpose of these protective orders is specifically to address domestic violence. The LDSS does not have standing to petition a court for the issuance of a protective order pursuant to §§ [16.1-253.1](#), [16.1-253.4](#), and [16.1-279.1](#). *The following code sections have been updated to reflect changes in the Code of Virginia effective July 1, 2011.*

### 8.7.1 Statutory authority

(§ [16.1-253.1 A](#) of the Code of Virginia). Preliminary protective orders in cases of family abuse; confidentiality.

A. Upon the filing of a petition alleging that the petitioner is or has been, within a reasonable period of time, subjected to family abuse, the court may issue a preliminary protective order against an allegedly abusing person in order to protect the health and safety of the petitioner or any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred shall constitute good cause. Evidence that the petitioner has been subjected to family abuse within a reasonable time and evidence of immediate and present danger of family abuse may be established by a showing that (i) the allegedly abusing person is incarcerated and is to be released from incarceration within 30 days following the petition or has been released from incarceration within 30 days prior to the petition, (ii) the crime for which the allegedly abusing person was convicted and incarcerated involved family abuse against the petitioner, and (iii) the allegedly abusing person has made threatening contact with the petitioner while he was incarcerated, exhibiting a renewed threat to the petitioner of family abuse.

A preliminary protective order may include any one or more of the following conditions to be imposed on the allegedly abusing person:

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 petitioner or family or household members of the petitioner* as the court deems *necessary for the health or safety of such persons*.
3. Granting the petitioner possession of the premises occupied by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession shall affect title to any real or personal property.
4. Enjoining the respondent from terminating any necessary utility service to a premises that the petitioner has been granted possession of pursuant to subdivision 3 or, where appropriate, ordering the respondent to restore utility services to such premises.
5. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner alone or jointly owned by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession or use shall affect title to the vehicle.
6. Requiring that the allegedly abusing person provide suitable alternative housing for the petitioner and any other family or household member and, where appropriate, requiring the respondent to pay deposits to connect or restore necessary utility services in the alternative housing provided.
7. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner.

#### **8.7.2 Name of alleged abuser to be entered Into Virginia Criminal Information Network**

(§ [16.1-253.1 B](#) of the Code of Virginia). B. The court 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 Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court. A copy of a preliminary protective order containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as provided in § [16.1-264](#) and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided

to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as provided in § [16.1-264](#). Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. The preliminary order shall specify a date for the full hearing. The hearing shall be held within 15 days of the issuance of the preliminary order. If the respondent fails to appear at this hearing because the respondent was not personally served, or if personally served was incarcerated and not transported to the hearing, the court may extend the protective order for a period not to exceed six months. The extended protective order shall be served forthwith on the respondent. However, upon motion of the respondent and for good cause shown, the court may continue the hearing. The preliminary order shall remain in effect until the hearing. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of the order and information regarding the date and time of service. The order shall further specify that either party may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.

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

### 8.7.3 Preliminary order effective upon service

(§ [16.1-253.1 C](#) of the Code of Virginia). The preliminary order is effective upon personal service on the allegedly abusing person. Except as otherwise provided in § [16.1-253.2](#), a violation of the order shall constitute contempt of court.

#### 8.7.4 Full hearing on the petition

(§ [16.1-253.1 D](#) of the Code of Virginia). At a full hearing on the petition, the court may issue a protective order pursuant to § [16.1-279.1](#) if the court finds that the petitioner has proven the allegation of family abuse by a preponderance of the evidence.

## 8.8 Appendix B: Emergency protective orders (EPO) in cases of family abuse

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### 8.8.1 Statutory authority

(§ [16.1-253.4 A](#) of the Code of Virginia). Emergency protective orders authorized in certain cases; confidentiality.

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.

Any judge or magistrate may issue an emergency protective order to protect the health and safety of any person in accordance with § [16.1-253.4](#). The emergency protective order may be issued ex parte, either in writing or orally.

### 8.8.2 A police officer or the allegedly abused person may petition the court and must testify to the circumstances

(§ [16.1-253.4 B](#) of the Code of Virginia). 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 family or household members of the respondent 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.

### 8.8.3 Duration of emergency protective order

(§ [16.1-253.4 C](#) of the Code of Virginia). 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.

### 8.8.4 Law enforcement may request EPO orally, in person, or by electronic means

(§ [16.1-253.4 D](#) of the Code of Virginia). 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.



### 8.8.5 Name of alleged abuser to be entered Into Virginia Criminal Information Network

(§ [16.1-253.4 E](#) of the Code of Virginia). 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 Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court or magistrate. A copy of an emergency protective order issued pursuant to this section containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Network established and maintained by the Department pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52 and the order shall be served forthwith on the respondent. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. One copy of the order shall be given to the allegedly abused person when it is issued, and one copy shall be filed with the written report required by *subsection D of § [19.2-81.3](#)*. The judge or magistrate who issues an oral order pursuant to an electronic request by a law-enforcement officer shall verify the written order to determine whether the officer who reduced it to writing accurately transcribed the contents of the oral order. The original copy shall be filed with the clerk of the juvenile and domestic relations district court within five business days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due



return made to the court. Upon request, the clerk shall provide the allegedly abused person with information regarding the date and time of service.

#### **8.8.6 EPO not affected by fact family left premise to avoid danger**

(§ [16.1-253.4 F](#) of the Code of Virginia). F. The availability of an emergency protective order shall not be affected by the fact that the family or household member left the premises to avoid the danger of family abuse by the respondent.

#### **8.8.7 Issuance of EPO not evidence of any wrongdoing**

(§ [16.1-253.4 G](#) of the Code of Virginia). G. The issuance of an emergency protective order shall not be considered evidence of any wrongdoing by the respondent.

This code section means that, although the court may have issued an emergency protective order against a person, the court order does not mean the person committed the alleged act. A full hearing on the matter must be conducted to determine whether the alleged act occurred.

#### **8.8.8 Definition of law-enforcement officer**

(§ [16.1-253.4 H](#) of the Code of Virginia). H. As used in this section, a "law-enforcement officer" means any (i) full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth and (ii) member of an auxiliary police force established pursuant to subsection B of § [15.2-1731](#). Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

#### **8.8.9 Definition of copy includes fax**

(§ [16.1-253.4 J](#) of the Code of Virginia). As used in this section, "copy" includes a facsimile copy.

## 8.9 Appendix C: Protective orders in cases of family abuse

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### 8.9.1 Statutory authority

(§ [16.1-279.1 A](#) of the Code of Virginia). Protective order in cases of family abuse.

A. In cases of family abuse, including any case involving an incarcerated or recently incarcerated respondent against whom a preliminary protective order has been issued pursuant to § [16.1-253.1](#), the court may issue a protective order to protect the health and safety of the petitioner and family or household members of the petitioner. A protective order issued under this section may include any one or more of the following conditions to be imposed 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 petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons;
3. Granting the petitioner possession of the residence 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;
4. Enjoining the respondent from terminating any necessary utility service to the residence to which the petitioner was granted possession pursuant to subdivision 3 or, where appropriate, ordering the respondent to restore utility services to that residence;
5. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner alone or jointly owned by the parties to the exclusion of the respondent; however, no such grant of possession or use shall affect title to the vehicle;
6. Requiring that the respondent provide suitable alternative housing for the petitioner and, if appropriate, any other family or household member and where appropriate, requiring the respondent to pay deposits to connect or restore necessary utility services in the alternative housing provided;
7. Ordering the respondent to participate in treatment, counseling or other programs as the court deems appropriate; and
8. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner, including a provision for temporary custody or visitation of a minor child.

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

### 8.9.2 Duration of protective order

([§ 16.1-279.1 B](#) of the Code of Virginia). B. The protective order may be issued for a specified period of time up to a maximum of two years. The protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Prior to the expiration of the protective order, a petitioner may file a written motion requesting a hearing to extend the order. Proceedings to extend a protective order shall be given precedence on the docket of the court. If the petitioner was a member of the respondent's family or household at the time the initial protective order was issued, the court may extend the protective order for a period not longer than two years to protect the health and safety of the petitioner or persons who are family or household members of the petitioner at the time the request for an extension is made. The extension of the protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Nothing herein shall limit the number of extensions that may be requested or issued.

### 8.9.3 Name of alleged abuser to be entered Into Virginia Criminal Information Network

([§ 16.1-279.1 C](#) of the Code of Virginia). C. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. The court 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 Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court and shall forthwith forward the attested copy of the protective order containing any such identifying information to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 ([§ 52-12](#) et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of

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

#### **8.9.4 Violation of court order constitutes contempt of court**

(§ [16.1-279.1 D](#) of the Code of Virginia). D. Except as otherwise provided in § [16.1-253.2](#), a violation of a protective order issued under this section shall constitute contempt of court.

#### **8.9.5 Court costs and attorney's fees**

(§ [16.1-279.1 E](#) of the Code of Virginia). E. The court may assess costs and attorneys' fees against either party regardless of whether an order of protection has been issued as a result of a full hearing.

#### **8.9.6 Other state court orders given full faith and credit**

(§ [16.1-279.1 F](#) of the Code of Virginia). F. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such person's due process rights and consistent with federal law. A person entitled to protection under such a foreign order may file the order in any juvenile and domestic relations district court by filing with the court an attested or exemplified copy of the order. Upon such a filing, the clerk shall forthwith

forward an attested copy of the order to the primary law-enforcement agency responsible for service and entry of protective orders which shall, upon receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network.

#### **8.9.7 Either party may request dissolution or modification of protective order**

(§ [16.1-279.1 G](#) of the Code of Virginia). G. Either party may at any time file a written motion with the court requesting a hearing to dissolve or modify the order. Proceedings to dissolve or modify a protective order shall be given precedence on the docket of the court.

#### **8.9.8 Copy includes fax**

(§ [16.1-279.1 H](#) of the Code of Virginia). H. As used in this section, "copy" includes a facsimile copy.