

RECENT CHANGES TO VIRGINIA LAW
REGARDING PROTECTIVE ORDERS

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In 2010, I reported on the status of protective orders under Virginia law as it existed at that time, in response to the recent murder of a player on the University of Virginia women's lacrosse team. The General Assembly, in 2011, passed legislation which revised multiple statutes regarding family abuse and protective orders. It is expected that the Governor will sign this legislation, and the new laws will become effective July 1, 2011.

The definition of "family abuse" has now been amended, and the new definition is:

Any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person's family or household member. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of [Virginia law], or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault or bodily injury.
H.B. 2063.

This definition of "family abuse" has been broadened to include criminal activity that may occur between individuals that are not necessarily family or household members. That criminal activity includes forceful detention, stalking and criminal sexual assault, or any criminal offense that places one in reasonable apprehension of death, sexual assault or bodily injury.

This new definition of family abuse has now been incorporated in the statutes regarding emergency protective orders, preliminary protective orders and permanent protective orders. Va.

Code §§ 16.1-228, 16.1-253, 16.1-253.4, 16.1-279.1. These protective orders prohibit acts of family abuse or criminal offenses that result in injury to a person or property. Va. Code §16.1-253.1(A)(1). These protective orders also will prohibit contact between a respondent and a petitioner or a family or household member of the petitioner. Va. Code §16.1-253.1(A)(2). No longer are protective orders limited to protecting merely family members and household members of that individual. Protective orders may now include prohibiting acts of criminal offenses between unrelated individuals.

Additionally, the penalties for violating a protective order have been amended. The punishment for a person convicted for a second offense of violating a protective order, when that offense has occurred within five years of the last conviction, includes a mandatory minimum of 60 days confinement in jail. Va. Code §18.2-60.4. A third offense, which is committed within twenty years of the first conviction, shall be considered a Class 6 felony punishable with a minimum term of six months. If injury results, the perpetrator shall also be guilty of a Class 6 felony.

If a law enforcement officer has probable cause to believe that the perpetrator has violated a protective order and the violation involves physical aggression, the officer shall arrest and take into custody the perpetrator. Va. Code §19.2-81.3. The officer's determination of a predominant physical aggressor shall be based upon consideration of the following factors:

- (i) Who is the first aggressor;
- (ii) The protection of the health and safety of the person to whom the protective order was issued;
- (iii) Prior acts of violence, force or threat by the person against whom the protective order was issued;
- (iv) The relative severity of the injuries;

- (v) Whether injuries were inflicted in self-defense;
- (vi) Witness statements; and
- (vii) Other observations.

Protective orders regarding stalking have been changed to include a definition for an “act of violence, force, or threat”. This phrase means:

Any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault or bodily injury. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of [Virginia law], or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. Va. Code §19.2-152.7:1

The amendments to this statute also provide that a law enforcement officer may request an emergency protective order if the person in need of protection is physically or mentally incapable of filing such a petition.

In conclusion, the amendments to various statutes regarding protective orders passed by the 2011 General Assembly broaden the coverage of protective orders to include any kind of perpetrator whether that be a boyfriend, girlfriend or acquaintance. The definition of “family abuse” has been broadened to include certain criminal conduct. These amendments to the laws of Virginia should provide the protection necessary for any individual in the Commonwealth to seek a protective order against someone who has committed an act of violence or threatened to commit an act of violence against that individual.