
Code of Virginia

Selected Family Violence and Stalking Related Statutes

(As of July 1, 2004)



Prepared by

*Department of Criminal Justice Services
Victims Services Section
805 East Broad Street, 10th Floor
Richmond, VA 23219
(804) 786-4000
<http://www.dcjs.virginia.gov/>*

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Note: Statutes amended during the 2004 Session of the General Assembly can be identified by **bold type at the end of each statute** identifying the Chapter numbers associated with the 2004 amendments (i.e. **2004, cc. 184, 410**).

To view Chapters go to <http://leg1.state.va.us/041/srb.htm>. Enter the chapter number in the “search phrase” box. Select “chapter” as the type of search and hit the “submit” button. Then select, the Chapter from the results page.

§ 8.01-9. Guardian ad litem for persons under disability; when guardian ad litem need not be appointed for person under disability.

A. A suit wherein a person under a disability is a party defendant shall not be stayed because of such disability, but the court in which the suit is pending, or the clerk thereof, shall appoint a discreet and competent attorney-at-law as guardian ad litem to such defendant, whether the defendant has been served with process or not. If no such attorney is found willing to act, the court shall appoint some other discreet and proper person as guardian ad litem. Any guardian ad litem so appointed shall not be liable for costs. Every guardian ad litem shall faithfully represent the estate or other interest of the person under a disability for whom he is appointed, and it shall be the duty of the court to see that the interest of the defendant is so represented and protected. Whenever the court is of the opinion that the interest of the defendant so requires, it shall remove any guardian ad litem and appoint another in his stead. When, in any case, the court is satisfied that the guardian ad litem has rendered substantial service in representing the interest of the person under a disability, it may allow the guardian reasonable compensation therefore, and his actual expenses, if any, to be paid out of the estate of the defendant. However, if the defendant's estate is inadequate for the purpose of paying compensation and expenses, all, or any part thereof, may be taxed as costs in the proceeding or, in the case of proceedings to adjudicate a person under a disability as an habitual offender pursuant to former § 46.2-351.2 or former § 46.2-352, shall be paid by the Commonwealth out of the state treasury from the appropriation for criminal charges. In a civil action against an incarcerated felon for damages arising out of a criminal act, the compensation and expenses of the guardian ad litem shall be paid by the Commonwealth out of the state treasury from the appropriation for criminal charges. If judgment is against the incarcerated felon, the amount allowed by the court to the guardian ad litem shall be taxed against the incarcerated felon as part of the costs of the proceeding, and if collected, the same shall be paid to the Commonwealth. By order of the court, in a civil action for divorce from an incarcerated felon, the compensation and expenses of the guardian ad litem shall be paid by the Commonwealth out of the state treasury from the appropriation for criminal charges if the crime (i) for which the felon is incarcerated occurred after the date of the marriage for which the divorce is sought, (ii) for which the felon is incarcerated was committed against the felon's spouse, child, or stepchild and involved physical injury, sexual assault, or sexual abuse, and (iii) resulted in incarceration subsequent to conviction and the felon was sentenced to confinement for more than one year. The amount allowed by the court to the guardian ad litem shall be taxed against the incarcerated felon as part of the costs of the proceeding, and if collected, the same shall be paid to the Commonwealth.

B. Notwithstanding the provisions of subsection A or the provisions of any other law to the contrary, in any suit wherein a person under a disability is a party and is represented by an attorney-at-law duly licensed to practice in this Commonwealth, who shall have entered of record an appearance for such person, no guardian ad litem need be appointed for such person unless the court determines that the interests of justice require such appointment; or unless a statute applicable to such suit expressly requires that the person under a disability be represented by a guardian ad litem. The court may, in its discretion, appoint the attorney of record for the person under a disability as his guardian ad litem, in which event the attorney shall perform all the duties and functions of guardian ad litem.

Any judgment or decree rendered by any court against a person under a disability without a guardian ad litem, but in compliance with the provisions of this subsection B, shall be as valid as if the guardian ad litem had been appointed. (Code 1950, §§ 8-88, 8-88.1; 1972, c. 720; 1977, c. 617; 1996, c. 887; 1999, cc. 945, 955, 987; 2001, c. 127; 2003, c. 563.)

§ 9.1-116.1. Virginia Domestic Violence Victim Fund; purpose; guidelines.

A. There is created the Virginia Domestic Violence Victim Fund as a special nonreverting fund to be administered by the Department of Criminal Justice Services to support the prosecution of domestic violence cases and victim services.

B. The Department shall adopt guidelines, the purpose of which shall be to make funds available to (i) local attorneys for the Commonwealth for the purpose of funding the cost of additional attorneys or to further dedicate existing resources to prosecute felonies and misdemeanors involving domestic violence, sexual abuse, stalking and family abuse, and (ii) law-enforcement authorities or appropriate programs, including civil legal assistance, to assist in protecting and providing necessary services to victims of and children affected by domestic violence, sexual abuse, stalking and family abuse.

C. A portion of the sum collected pursuant to § 16.1-69.48:1 as specified in that section shall be deposited into the state treasury to the credit of this Fund in addition to any other monies appropriated, allocated or received specifically for such purpose. The Fund shall be distributed according to grant procedures adopted pursuant to this section and shall be established on the books of the Comptroller. Any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund.

D. The Department shall establish a grant procedure to govern funds awarded for this purpose.

(2004, c. 375.)

§ 16.1-228. Definitions.

When used in this chapter, unless the context otherwise requires:

"Abused or neglected child" means any child:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § [18.2-248](#);
2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;
3. Whose parents or other person responsible for his care abandons such child;
4. Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law; or
5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis.

If a civil proceeding under this chapter is based solely on the parent having left the child at a hospital or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § [16.1-283](#) and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"Adoptive home" means the place of residence of any natural person in which a child resides as a member of the household and in which he has been placed for the purposes of adoption or in which he has been legally adopted by another member of the household.

"Adult" means a person 18 years of age or older.

"Ancillary crime" or "ancillary charge" means any delinquent act committed by a juvenile as a part of the same act or transaction as, or which constitutes a part of a common scheme or plan with, a delinquent act which would be a felony if committed by an adult.

"Boot camp" means a short term secure or nonsecure juvenile residential facility with highly structured components including, but not limited to, military style drill and ceremony, physical labor, education and rigid discipline, and no less than six months of intensive aftercare.

"Child," "juvenile" or "minor" means a person less than 18 years of age.

"Child welfare agency" means a child-placing agency, child-caring institution or independent foster home as defined in § [63.2-100](#).

"Child in need of services" means (i) a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child or (ii) a child under the age of 14 whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of another person; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be a child in need of services, nor shall any child who habitually remains away from or habitually deserts or abandons his family as a result of what the court or the local child protective services unit determines to be incidents of physical, emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

However, to find that a child falls within these provisions, (i) the conduct complained of must present a clear and substantial danger to the child's life or health or to the life or health of another person, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

"Child in need of supervision" means:

1. A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success, and (iii) the school system has provided documentation that it has complied with the provisions of § [22.1-258](#); or

2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or placement authority, remains away from or deserts or abandons his family or lawful custodian on more than one occasion or escapes or remains away without proper authority from a residential care facility in which he has been placed by the court, and (i) such conduct presents a clear and substantial danger to the child's life or health, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

"The court" or the "juvenile court" or the "juvenile and domestic relations court" means the juvenile and domestic relations district court of each county or city.

"Delinquent act" means (i) an act designated a crime under the law of this Commonwealth, or an ordinance of any city, county, town or service district, or under federal law, (ii) a violation of § [18.2-308.7](#), or (iii) a violation of a court order as provided for in § [16.1-292](#), but shall not include an act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if committed by a child. For purposes of §§ [16.1-241](#) and [16.1-278.9](#), the term shall include a refusal to take a blood or breath test in violation of § [18.2-268.2](#) or a similar ordinance of any county, city or town.

"Delinquent child" means a child who has committed a delinquent act or an adult who has committed a delinquent act prior to his eighteenth birthday, except where the jurisdiction of the juvenile court has been terminated under the provisions of § [16.1-269.6](#).

"Department" means the Department of Juvenile Justice and "Director" means the administrative head in charge thereof or such of his assistants and subordinates as are designated by him to discharge the duties imposed upon him under this law.

"Family abuse" means any act involving violence, force, or threat including, but not limited to, any forceful detention, which results in bodily injury or places one in reasonable apprehension of bodily injury and which is committed by a person against such person's family or household member.

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

and any children of either of them then residing in the same home with the person.

"Foster care services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § [63.2-100](#) or in need of services as defined in this section and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or a public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board pursuant to § [16.1-293](#).

"Intake officer" means a juvenile probation officer appointed as such pursuant to the authority of this chapter.

"Jail" or "other facility designed for the detention of adults" means a local or regional correctional facility as defined in § [53.1-1](#), except those facilities utilized on a temporary basis as a court holding cell for a child incident to a court hearing or as a temporary lock-up room or ward incident to the transfer of a child to a juvenile facility.

"The judge" means the judge or the substitute judge of the juvenile and domestic relations district court of each county or city.

"This law" or "the law" means the Juvenile and Domestic Relations District Court Law embraced in this chapter.

"Legal custody" means (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.

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ [63.2-900](#) and [63.2-908](#) with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § [16.1-251](#) or § [63.2-1517](#). A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

"Residual parental rights and responsibilities" means all rights and responsibilities remaining with the parent after the transfer of legal custody or

guardianship of the person, including but not limited to the right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility for support.

"Secure facility" or "detention home" means a local, regional or state public or private locked residential facility that has construction fixtures designed to prevent escape and to restrict the movement and activities of children held in lawful custody.

"Shelter care" means the temporary care of children in physically unrestricting facilities.

"State Board" means the State Board of Juvenile Justice.

"Status offender" means a child who commits an act prohibited by law which would not be criminal if committed by an adult.

"Status offense" means an act prohibited by law which would not be an offense if committed by an adult.

"Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of § [16.1-269.1](#) when committed by a juvenile 14 years of age or older.

(Code 1950, § 16.1-141; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1974, cc. 44, 45; 1977, c. 559; 1978, c. 605; 1979, c. 15; 1981, c. 491; 1984, c. 631; 1985, c. 260; 1986, cc. 281, 308; 1987, c. 632; 1988, c. 794; 1990, cc. 704, 769, 842; 1991, c. 534; 1992, cc. 742, 830, 886; 1993, cc. 435, 467, 494; 1994, cc. 859, 865, 949; 1996, cc. 755, 914; 1999, cc. 453, 665, 697, 721; 2002, cc. 810, 818; 2003, cc. 538, 547, 835; **2004, cc. 245, 753.**)

§ 16.1-241. Jurisdiction; consent for abortion.

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county, over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except as provided in § [16.1-244](#);

4. Who is the subject of an entrustment agreement entered into pursuant to § [63.2-903](#) or § [63.2-1817](#) or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § [16.1-244](#); and

6. Who is charged with a traffic infraction as defined in § [46.2-100](#).

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § [16.1-269.1](#), and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § [16.1-269.1](#), and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § [16.1-269.1](#), the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of § [16.1-269.1](#) to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § [16.1-269.1](#), if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § [16.1-269.6](#).

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be divested unless there is a transfer pursuant to subsection A of § [16.1-269.1](#).

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives from or through a person whose parental rights have been terminated by court order, either voluntarily or involuntarily, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted, except where a final order of adoption is entered pursuant to § [63.2-1241](#), or (iii) who has been convicted of a violation of subsection A of § [18.2-61](#), § [18.2-63](#) or subsection B of § [18.2-366](#) when the child who is the subject of the petition was conceived as a result of such violation. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ [16.1-335](#) et seq.) of this chapter and the commitment of a mentally ill person or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person in accordance with the provisions of Chapters 1 (§ [37.1-1](#) et seq.) and 2 (§ [37.1-63](#) et seq.) of Title 37.1. Jurisdiction of the commitment and certification of adults shall be concurrent with the general district court.

C. Except as provided in subsections D and H hereof, judicial consent to such activities as may require parental consent may be given for a child who has been separated from his parents, guardian, legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

D. Judicial consent for emergency surgical or medical treatment for a child who is neither married nor has ever been married, when the consent of his parent, guardian, legal custodian or other person standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person standing in loco parentis (i) is not a resident of the Commonwealth, (ii) has his whereabouts unknown, (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such consent or provide such treatment when requested by the judge to do so.

E. Any person charged with deserting, abandoning or failing to provide support for any person in violation of law.

F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

1. Who has been abused or neglected;
2. Who is the subject of an entrustment agreement entered into pursuant to § [63.2-903](#) or § [63.2-1817](#) or is otherwise before the court pursuant to subdivision A 4 of this section; or
3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court finds that such person has by overt act or omission induced, caused, encouraged or contributed to the conduct of the child complained of in the petition.

G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services that are required by law to be provided for that child or such child's parent, guardian, legal custodian or other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not exclusive of that of courts having equity jurisdiction as provided in § [16.1-244](#).

H. Judicial consent to apply for a work permit for a child when such child is separated from his parents, legal guardian or other person standing in loco parentis.

I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or neglect of children or with any violation of law that causes or tends to cause a child to come within the purview of this law, or with any other offense against the person of a child. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause.

J. All offenses in which one family or household member is charged with an offense in which another family or household member is the victim and all offenses under § [18.2-49.1](#).

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. Any objection based on jurisdiction under this subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial, before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse. A decision under this subdivision shall not be res judicata in any

subsequent action for spousal support in a circuit court. A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § [16.1-253.1](#) or § [16.1-279.1](#).

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

O. Petitions for emancipation of a minor pursuant to Article 15 (§ [16.1-331](#) et seq.) of this chapter.

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ [20-49.1](#) et seq.) of Title 20.

R. Petitions for the purpose of obtaining an emergency protective order pursuant to § [16.1-253.4](#).

S. Petitions filed by school boards against parents pursuant to §§ [16.1-241.2](#) and [22.1-279.3](#).

T. Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § [63.2-1526](#).

U. Petitions filed in connection with parental placement adoption consent hearings pursuant to § [63.2-1233](#). Such proceedings shall be advanced on the docket so as to be heard by the court within 10 days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

V. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion if a minor elects not to seek consent of an authorized person.

After a hearing, a judge shall issue an order authorizing a physician to perform an abortion, without the consent of any authorized person, if he finds that (i) the minor is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independent of the wishes of any authorized person, or (ii) the minor is not mature enough or well enough informed to make such decision, but the desired abortion would be in her best interest.

If the judge authorizes an abortion based on the best interests of the minor, such order shall expressly state that such authorization is subject to the physician or

his agent giving notice of intent to perform the abortion; however, no such notice shall be required if the judge finds that such notice would not be in the best interest of the minor. In determining whether notice is in the best interest of the minor, the judge shall consider the totality of the circumstances; however, he shall find that notice is not in the best interest of the minor if he finds that (i) one or more authorized persons with whom the minor regularly and customarily resides is abusive or neglectful, and (ii) every other authorized person, if any, is either abusive or neglectful or has refused to accept responsibility as parent, legal guardian, custodian or person standing in loco parentis.

The minor may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and shall, upon her request, appoint counsel for her.

Notwithstanding any other provision of law, the provisions of this subsection shall govern proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and records of such proceedings shall be confidential. Such proceedings shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay in order to serve the best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon as practicable but in no event later than four days after the petition is filed.

An expedited confidential appeal to the circuit court shall be available to any minor for whom the court denies an order authorizing an abortion without consent or without notice. Any such appeal shall be heard and decided no later than five days after the appeal is filed. The time periods required by this subsection shall be subject to § [1-13.3:1](#). An order authorizing an abortion without consent or without notice shall not be subject to appeal.

No filing fees shall be required of the minor at trial or upon appeal.

If either the original court or the circuit court fails to act within the time periods required by this subsection, the court before which the proceeding is pending shall immediately authorize a physician to perform the abortion without consent or notice to an authorized person.

Nothing contained in this subsection shall be construed to authorize a physician to perform an abortion on a minor in circumstances or in a manner that would be unlawful if performed on an adult woman.

A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent has been obtained or the minor delivers to the physician a court order entered pursuant to this section and the physician or his agent provides such notice as such order may require. However, neither consent nor judicial authorization nor notice shall be required if the minor declares that she is abused or neglected and the attending physician has reason to suspect that the

minor may be an abused or neglected child as defined in § [63.2-100](#) and reports the suspected abuse or neglect in accordance with § [63.2-1509](#); or if there is a medical emergency, in which case the attending physician shall certify the facts justifying the exception in the minor's medical record.

For purposes of this subsection:

"Authorization" means the minor has delivered to the physician a notarized, written statement signed by an authorized person that the authorized person knows of the minor's intent to have an abortion and consents to such abortion being performed on the minor.

"Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with whom the minor regularly and customarily resides and who has care and control of the minor. Any person who knows he is not an authorized person and who knowingly and willfully signs an authorization statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

"Consent" means that (i) the physician has given notice of intent to perform the abortion and has received authorization from an authorized person, or (ii) at least one authorized person is present with the minor seeking the abortion and provides written authorization to the physician, which shall be witnessed by the physician or an agent thereof. In either case, the written authorization shall be incorporated into the minor's medical record and maintained as a part thereof.

"Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.

"Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual notice of his intention to perform such abortion to an authorized person, either in person or by telephone, at least 24 hours previous to the performance of the abortion; or (ii) the physician or his agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at least 72 hours prior to the performance of the abortion.

"Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical procedure or to induce a miscarriage as provided in §§ [18.2-72](#), [18.2-73](#) or § [18.2-74](#).

"Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any of the Armed Forces of the United States;

(iii) willingly living separate and apart from his or her parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of emancipation pursuant to Article 15 (§ [16.1-331](#) et seq.) of this chapter.

W. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) of this chapter relating to standby guardians for minor children.

The ages specified in this law refer to the age of the child at the time of the acts complained of in the petition.

Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of any process in a proceeding pursuant to subdivision 3 of subsection A, except as provided in subdivision A 6 of § [17.1-272](#), or subsection B, D, M or R of this section.

Notwithstanding the provisions of § [18.2-71](#), any physician who performs an abortion in violation of subsection V shall be guilty of a Class 3 misdemeanor.

(Code 1950, § 16.1-158; 1956, c. 555; 1960, c. 388; 1968, c. 225; 1970, cc. 232, 600; 1973, c. 440; 1976, cc. 42, 324; 1977, cc. 525, 559; 1978, c. 648; 1979, cc. 597, 605, 628; 1980, cc. 527, 529; 1981, cc. 454, 475, 488, 491, 501, 502, 510; 1982, c. 46; 1983, c. 280; 1984, cc. 631, 645, 651, 665, 669; 1985, c. 270; 1986, cc. 59, 506; 1987, c. 632; 1988, cc. 797, 906; 1989, cc. 368, 733; 1990, cc. 704, 975; 1991, cc. 511, 715; 1992, cc. 585, 742; 1994, cc. 575, 719, 813, 859, 949; 1995, cc. 7, 665, 772, 826, 852; 1996, cc. 755, 914; 1997, cc. 690, 708; 1998, c. 829; 1999, cc. 697, 721, 1028; 2000, c. 830; 2003, cc. 229, 960, 962; **2004, c. 588.**)

§ 16.1-243. Venue.

A. Original venue:

1. Cases involving children, other than support or where protective order issued: Proceedings with respect to children under this law, except support proceedings as provided in subdivision 2 of this subsection or family abuse proceedings as provided in subdivision 3 of this subsection, shall:

a. Delinquency: If delinquency is alleged, be commenced in the city or county where the acts constituting the alleged delinquency occurred or they may, with the written consent of the child and the attorney for the Commonwealth for both jurisdictions, be commenced in the city or county where the child resides;

b. Custody or visitation: In cases involving custody or visitation, be commenced in the court of the city or county which, in order of priority, (i) is the home of the child at the time of the filing of the petition, or had been the home of the child within six months before the filing of the petition and the child is absent from the city or county because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as a parent continues

to live in the city or county, (ii) has significant connection with the child and in which there is substantial evidence concerning the child's present or future care, protection, training and personal relationships, (iii) is where the child is physically present and the child has been abandoned or it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent or (iv) it is in the best interest of the child for the court to assume jurisdiction as no other city or county is an appropriate venue under the preceding provisions of this subdivision;

c. Adoption: In parental placement adoption consent hearings pursuant to §§ 16.1-241, 63.2-1233 and 63.2-1237, be commenced (i) in the city or county where the child to be adopted was born, (ii) in the city or county where the birth parent(s) reside, or (iii) in the city or county where the prospective adoptive parent(s) reside; and

d. All other cases: In all other proceedings, be commenced in the city or county where the child resides or in the city or county where the child is present when the proceedings are commenced.

2. Support: Proceedings that involve child or spousal support or child and spousal support, exclusive of proceedings arising under Chapter 5 (§ 20-61 et seq.) of Title 20, shall be commenced in the city or county where either party resides or in the city or county where the respondent is present when the proceeding commences.

3. Family abuse: Proceedings in which an order of protection 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 a family or household member of the petitioner.

B. Transfer of venue:

1. Generally: Except in custody, visitation and support cases, if the child resides in a city or county of the Commonwealth and the proceeding is commenced in a court of another city or county, that court may at any time, on its own motion or a motion of a party for good cause shown, transfer the proceeding to the city or county of the child's residence for such further action or proceedings as the court receiving the transfer may deem proper. However, such transfer may occur only after adjudication in delinquency proceedings.

2. Custody and visitation: In custody and visitation cases, if venue lies in one of several cities or counties, the court in which the motion for transfer is made shall determine which such city or county is the most appropriate venue unless the parties mutually agree to the selection of venue. In the consideration of the motion, the best interests of the child shall determine the most appropriate forum.

3. Support: In support proceedings, exclusive of proceedings arising under Chapter 5 of Title 20, if the respondent resides in a city or county in the Commonwealth and the proceeding is commenced in a court of another city or county, that court may, at any time on its own motion or a motion of a party for good cause shown or by agreement of the parties, transfer the proceeding to the city or county of the respondent's residence for such further action or proceedings as the court receiving the transfer may deem proper. For the purposes of determining venue of cases involving support, the respondent's residence shall include any city or county in which the respondent has resided within the last six months prior to the commencement of the proceeding or in which the respondent is residing at the time that the motion for transfer of venue is made. If venue is transferable to one of several cities or counties, the court in which the motion for transfer is made shall determine which such city or county is the most appropriate venue unless the parties mutually agree to the selection of such venue.

When the support proceeding is a companion case to a child custody or visitation proceeding, the provisions governing venue in the proceeding involving the child's custody or visitation shall govern.

4. Subsequent transfers: Any court receiving a transferred proceeding as provided in this section may in its discretion transfer such proceeding to a court in an appropriate venue for good cause shown based either upon changes in circumstances or mistakes of fact or upon agreement of the parties. In any transfer of venue in cases involving children, the best interests of the child shall be considered in deciding if and to which court a transfer of venue would be appropriate.

5. Enforcement of orders for support, maintenance and custody: Any juvenile and domestic relations district court to which a suit is transferred for enforcement of orders pertaining to support, maintenance, care or custody pursuant to § 20-79 (c) may transfer the case as provided in this section.

C. Records: Originals of all legal and social records pertaining to the case shall accompany the transfer of venue. The transferor court may, in its discretion, retain such copies as it deems appropriate.

(Code 1950, § 16.1-160; 1956, c. 555; 1977, c. 559; 1985, c. 367; 1987, cc. 598, 608, 620; 1989, c. 545; 1995, cc. 772, 826; 1996, c. 866; 2000, c. 830.)

§ 16.1-244. Concurrent jurisdiction; exceptions.

A. Nothing contained in this law shall deprive any other court of the concurrent jurisdiction to determine the custody of children upon a writ of habeas corpus under the law, or to determine the custody, guardianship, visitation or support of children when such custody, guardianship, visitation or support is incidental to

the determination of causes pending in such courts, nor deprive a circuit court of jurisdiction to determine spousal support in a suit for separate maintenance. However, when a suit for divorce has been filed in a circuit court, in which the custody, guardianship, visitation or support of children of the parties or spousal support is raised by the pleadings and a hearing, including a pendente lite hearing, is set by the circuit court on any such issue for a date certain or on a motions docket to be heard within 21 days of the filing, the juvenile and domestic relations district courts shall be divested of the right to enter any further decrees or orders to determine custody, guardianship, visitation or support when raised for such hearing and such matters shall be determined by the circuit court unless both parties agreed to a referral to the juvenile court. Nothing in this section shall deprive a circuit court of the authority to refer any such case to a commissioner for a hearing or shall deprive the juvenile and domestic relations district courts of the jurisdiction to enforce its valid orders prior to the entry of a conflicting order of any circuit court for any period during which the order was in effect or to temporarily place a child in the custody of any person when that child has been adjudicated abused, neglected, in need of services or delinquent subsequent to the order of any circuit court.

B. Jurisdiction of cases involving violations of federal law by a child shall be concurrent and shall be assumed only if waived by the federal court or the United States attorney.

(Code 1950, § 16.1-161; 1956, c. 555; 1977, c. 559; 1978, c. 740; 1984, cc. 657, 669; 1985, c. 183; 1987, c. 36; 1989, c. 509; 1990, c. 600; 2000, c. 781; 2003, c. 129.)

§ 16.1-253. Preliminary protective order.

A. 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. 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. These conditions shall include any one or more of the following:

1. 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;
2. To cooperate in the provision of reasonable services or programs designed to protect the child's life, health or normal development;

3. 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;

4. To allow visitation with the child by persons entitled thereto, as determined by the court;

5. To refrain from acts of commission or omission which tend to endanger the child's life, health or normal development; or

6. 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.

B. 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.

C. 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.

D. All parties to the hearing shall be informed of their right to counsel pursuant to § 16.1-266.

E. 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.

F. 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.

G. 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. Upon receipt of the order by a local law-enforcement agency for service, the 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. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network. A copy of the preliminary protective order shall be served as soon as possible on the allegedly abusing person in person as provided in § 16.1-264, and upon service, the agency making service shall enter the date and time of service into the Virginia Criminal Information Network. The preliminary order shall specify a date for the dispositional hearing. 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.

H. 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.

I. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

J. Violation of any order issued pursuant to this section shall constitute contempt of court.

K. Upon receipt of the order by a local law-enforcement agency for service, the 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. Where feasible and practical, the court may transfer information electronically to the Virginia Criminal Information Network. A copy of the preliminary protective order shall be served as soon as possible on the allegedly abusing person as provided in § 16.1-264, and upon service, the agency making service shall enter the date and time of service into the Virginia Criminal Information Network. The preliminary order shall specify a date for the full hearing.

Upon receipt of the return of service or other proof of service pursuant to subsection C of § 16.1-264, the clerk shall forward forthwith an attested copy of the preliminary protective order to the local police department or sheriff's office which shall, upon receipt, enter into the Virginia Criminal Information Network any other information required by the State Police that was not previously entered. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded and entered in the Virginia Criminal Information Network as described above.

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

(1977, c. 559; 1985, c. 595; 1986, c. 308; 1987, c. 497; 1996, c. 866; 1997, c. 790; 1998, c. 550; 2002, cc. 508, 810, 818.)

§ 16.1-253.1. 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.

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.
2. Prohibiting such other contacts between the parties as the court deems appropriate.
3. Prohibiting such other contacts with the allegedly abused family or household member as the court deems necessary to protect the safety of such persons.
4. 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.
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, where appropriate.

B. Upon receipt of the order by a local law-enforcement agency for service, the 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 system 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 system. A copy of a preliminary protective order shall be served as soon as possible on the allegedly abusing person in person as provided in § 16.1-264, and upon service, the agency making service shall enter

the date and time of service into the Virginia Criminal Information Network system. The preliminary order shall specify a date for the full hearing. The hearing shall be held within fifteen days of the issuance of the preliminary order. 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 forward forthwith an attested copy of the preliminary protective order to the local police department or sheriff's office which shall, upon receipt, enter into the Virginia Criminal Information Network system any other information required by the State Police which was not previously entered. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded and entered in the Virginia Criminal Information Network system as described above.

C. 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.

D. 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.

E. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

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

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

(1984, c. 631; 1987, c. 497; 1988, c. 165; 1992, c. 886; 1994, c. 907; 1996, c. 866; 1997, c. 603; 1998, c. 684; 2000, cc. 34, 654; 2001, c. 101; 2002, cc. 508, 810, 818.)

§ 16.1-253.2. Violation of provisions of protective orders; penalty.

In addition to any other penalty provided by law, any person who violates any provision of a protective order issued pursuant to §§ 16.1-253, [16.1-253.1](#), [16.1-253.4](#), [16.1-278.14](#), [16.1-279.1](#) or subsection B of § [20-103](#), which prohibits such person from going or remaining upon land, buildings or premises or from further acts of family abuse, or which prohibits contacts between the respondent and the respondent's family or household member as the court deems appropriate is guilty of a Class 1 misdemeanor. If the respondent commits an assault and battery upon any party protected by the protective order, resulting in serious bodily injury to the party, he is guilty of a Class 6 felony. Any person who violates such a protective order by furtively entering the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty provided by law. Upon conviction, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § [16.1-279.1](#) for a specified period not exceeding two years from the date of conviction.

(1987, c. 700; 1988, c. 501; 1991, cc. 534, 715; 1992, c. 886; 1996, c. 866; 2003, c. 219; **2004, cc. 972, 980.**)

§ 16.1-253.4. Emergency protective orders authorized in certain cases; penalty.

A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person.

B. When a law-enforcement officer or an allegedly abused person asserts under oath to a judge or magistrate, and on that assertion or other evidence the judge or magistrate finds that (i) a warrant for a violation of § 18.2-57.2 has been issued and there is probable danger of further acts of family abuse against a family or household member by the respondent or (ii) 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;

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.

C. An emergency protective order issued pursuant to this section shall expire seventy-two hours after issuance. If the expiration of the seventy-two-hour period occurs at a time that the court is not in session, the emergency protective order shall be extended until 5 p.m. of the next business day that the juvenile and domestic relations district court is in session. The respondent 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.

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 seventy-two hours after expiration of the original order. The request for an emergency protective order or extension of an order may be made orally, in person or by electronic means, and the judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate may issue an oral emergency protective order. An oral emergency protective order issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the order or the magistrate on a preprinted form approved and provided by the Supreme Court of Virginia. The completed form shall include a statement of the grounds for the order asserted by the officer or the allegedly abused person.

E. Upon receipt of the order by a local law-enforcement agency for service, the 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 system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court or magistrate may transfer information electronically to the Virginia Criminal Information Network system. A copy of an emergency protective order issued pursuant to this section shall be served upon the respondent as soon as possible, and upon service, the agency making service shall enter the date and time of service into the Virginia Criminal Information Network system. 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 § 19.2-81.3 C. 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 be forwarded and entered in the system as described above. Upon request, the clerk shall provide the allegedly abused person with information regarding the date and time of service.

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.

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

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.

I. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

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

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

(1991, c. 715; 1992, c. 742; 1994, c. 907; 1996, c. 866; 1997, c. 603; 1998, cc. 677, 684; 1999, c. 807; 2001, c. 474; 2002, cc. 508, 706, 810, 818.)

§ 16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection H of this section and in § [16.1-259](#). The form and content of the petition shall be as provided in § [16.1-262](#). No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support

for a child. Complaints, requests and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk, (ii) the Department of Social Services may file support petitions on its own motion with the clerk, and (iii) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services, in need of supervision or delinquent. Complaints alleging abuse or neglect of a child shall be referred initially to the local department of social services in accordance with the provisions of Chapter 15 (§ [63.2-1500](#) et seq.) of Title 63.2. Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is receiving child support services or public assistance. No individual who is receiving support services or public assistance shall be denied the right to file a petition or motion to establish, modify or enforce an order for support of a child. If the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together with notice of the court date, to the Division of Child Support Enforcement.

B. The appearance of a child before an intake officer may be by (i) personal appearance before the intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, an intake officer may exercise all powers conferred by law. All communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

When the court service unit of any court receives a complaint alleging facts which may be sufficient to invoke the jurisdiction of the court pursuant to § [16.1-241](#), the unit, through an intake officer, may proceed informally to make such adjustment as is practicable without the filing of a petition or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to establish probable cause for the issuance of the petition.

An intake officer may proceed informally on a complaint alleging a child is in need of services, in need of supervision or delinquent only if the juvenile (i) is not alleged to have committed a violent juvenile felony or (ii) has not previously been proceeded against informally or adjudicated delinquent for an offense that would be a felony if committed by an adult. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is delinquent for an offense that would be a felony if committed by an

adult shall be filed with the court if the juvenile had previously been proceeded against informally by intake or had been adjudicated delinquent.

If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § [22.1-258](#) and the attendance officer has provided documentation to the intake officer that the relevant school division has complied with the provisions of § [22.1-258](#), then the intake officer shall file a petition with the court. The intake officer may defer filing the complaint for 90 days and proceed informally by developing a truancy plan. The intake officer may proceed informally only if the juvenile has not previously been proceeded against informally or adjudicated in need of supervision for failure to comply with compulsory school attendance as provided in § [22.1-254](#). The juvenile and his parent or parents, guardian or other person standing in loco parentis must agree, in writing, for the development of a truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents, guardian or other person standing in loco parentis participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as necessary to ensure the juvenile's compliance with compulsory school attendance as provided in § [22.1-254](#). The intake officer may refer the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an interagency interdisciplinary team approach. The team may include qualified personnel who are reasonably available from the appropriate department of social services, community services board, local school division, court service unit and other appropriate and available public and private agencies and may be the family assessment and planning team established pursuant to § [2.2-5207](#). If at the end of the 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, then the intake officer shall file the petition.

Whenever informal action is taken as provided in this subsection on a complaint alleging that a child is in need of services, in need of supervision or delinquent, the intake officer shall (i) develop a plan for the juvenile, which may include restitution and the performance of community service, based upon community resources and the circumstances which resulted in the complaint, (ii) create an official record of the action taken by the intake officer and file such record in the juvenile's case file, and (iii) advise the juvenile and the juvenile's parent, guardian or other person standing in loco parentis and the complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § [16.1-241](#) will result in the filing of a petition with the court.

C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody, visitation or support of a child is the subject of controversy or requires determination, (ii) a person has deserted, abandoned or failed to provide support for any person in violation of law, (iii) a child or such child's parent, guardian, legal custodian or other person standing in loco parentis is entitled to treatment, rehabilitation or other services which are required by law, or (iv) family abuse has occurred and a protective order is being sought pursuant to §§ [16.1-](#)

[253.1](#), [16.1-253.4](#) or § [16.1-279.1](#). If any such complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to be abused, neglected, in need of services, in need of supervision or delinquent, if the intake officer believes that probable cause does not exist, or that the authorization of a petition will not be in the best interest of the family or juvenile or that the matter may be effectively dealt with by some agency other than the court, he may refuse to authorize the filing of a petition. The intake officer shall provide to a person seeking a protective order pursuant to §§ [16.1-253.1](#), [16.1-253.4](#) or § [16.1-279.1](#) a written explanation of the conditions, procedures and time limits applicable to the issuance of protective orders pursuant to §§ [16.1-253.1](#), [16.1-253.4](#) or § [16.1-279.1](#).

D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be in need of supervision have utilized or attempted to utilize treatment and services available in the community and have exhausted all appropriate nonjudicial remedies which are available to them. When the intake officer determines that the parties have not attempted to utilize available treatment or services or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility or individual to receive treatment or services, and a petition shall not be filed. Only after the intake officer determines that the parties have made a reasonable effort to utilize available community treatment or services may he permit the petition to be filed.

E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a status offense, or a misdemeanor other than Class 1, his decision is final.

Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 2 of § [16.1-256](#), the intake officer shall accept and file a petition founded upon the warrant.

F. The intake officer shall notify the attorney for the Commonwealth of the filing of any petition which alleges facts of an offense which would be a felony if committed by an adult.

G. Notwithstanding the provisions of Article 12 (§ [16.1-299](#) et seq.) of this chapter, the intake officer shall file a report with the division superintendent of the school division in which any student who is the subject of a petition alleging that such student who is a juvenile has committed an act, wherever committed, which would be a crime if committed by an adult. The report shall notify the division superintendent of the filing of the petition and the nature of the offense, if the violation involves:

1. A firearm offense pursuant to Article 4 (§ [18.2-279](#) et seq.), 5 (§ [18.2-288](#) et seq.), 6 (§ [18.2-299](#) et seq.), or 7 (§ [18.2-308](#) et seq.) of Chapter 7 of Title 18.2;
2. Homicide, pursuant to Article 1 (§ [18.2-30](#) et seq.) of Chapter 4 of Title 18.2;
3. Felonious assault and bodily wounding, pursuant to Article 4 (§ [18.2-51](#) et seq.) of Chapter 4 of Title 18.2;
4. Criminal sexual assault, pursuant to Article 7 (§ [18.2-61](#) et seq.) of Chapter 4 of Title 18.2;
5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§ [18.2-247](#) et seq.) of Chapter 7 of Title 18.2;
6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ [18.2-247](#) et seq.) of Chapter 7 of Title 18.2;
7. Arson and related crimes, pursuant to Article 1 (§ [18.2-77](#) et seq.) of Chapter 5 of Title 18.2;
8. Burglary and related offenses, pursuant to §§ [18.2-89](#) through [18.2-93](#);
9. Robbery pursuant to § [18.2-58](#);
10. Prohibited street gang participation pursuant to § [18.2-46.2](#);
11. Prohibited criminal street gang activity pursuant to § [18.2-46.2](#);
12. Recruitment of other juveniles for a criminal street gang activity pursuant to § [18.2-46.3](#); or
13. Recruitment of juveniles for criminal street gang pursuant to § [18.2-46.3](#).

The failure to provide information regarding the school in which the juvenile who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

The information provided to a division superintendent pursuant to this section may be disclosed only as provided in § [16.1-305.2](#).

H. The filing of a petition shall not be necessary:

1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and other pedestrian offenses, game and fish laws or a violation of the ordinance of any city regulating surfing or any ordinance establishing curfew violations, animal control violations or littering violations. In such cases the court may proceed on a summons issued by the officer investigating the violation in the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle accident may, at the scene of the accident or at any other location where a juvenile who is involved in such an accident may be located, proceed on a summons in lieu of filing a petition.

2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subsection H of § [16.1-241](#).

3. In the case of a violation of § [18.2-266](#) or § [29.1-738](#), or the commission of any other alcohol-related offense, provided the juvenile is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the manner provided in § [16.1-278.8](#) or § [16.1-278.9](#). If the juvenile so charged with a violation of § [18.2-266](#) or § [29.1-738](#) refuses to provide a sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to §§ [18.2-268.1](#) through [18.2-268.12](#) or § [29.1-738.2](#), the provisions of these sections shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be served on a parent or legal guardian and the juvenile, and a copy of the summons shall be forwarded to the court in which the violation of § [18.2-266](#) or § [29.1-738](#) is to be tried.

4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in § [16.1-237](#) on a summons issued by the officer investigating the violation in the same manner as provided by law for adults provided that notice of the summons to appear is mailed by the investigating officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

I. Failure to comply with the procedures set forth in this section shall not divest the juvenile court of the jurisdiction granted it in § [16.1-241](#).

(Code 1950, § 16.1-164; 1956, c. 555; 1972, cc. 672, 835; 1973, c. 440; 1977, c. 559; 1979, c. 701; 1982, c. 91; 1983, c. 349; 1985, c. 488; 1986, c. 381; 1987, cc. 203, 632; 1988, cc. 792, 803; 1990, c. 742; 1991, cc. 496, 511, 534; 1992, cc. 502, 527, 542; 1993, c. 981; 1995, cc. 347, 429; 1996, cc. 755, 914; 1997, c. 862; 1999, cc. 54, 526, 952; 2002, c. 747; 2003, c. 587; **2004, cc. 105, 255, 309, 416, 517, 558.**)

§ 16.1-266.2. Appointment of pro bono counsel by judges of the First and Second Judicial District in certain cases.

The judges of the juvenile and domestic relations district court of the First and Second Judicial District are authorized to appoint pro bono counsel for alleged victims in family abuse cases in which the court is authorized to issue a preliminary protective order under § 16.1-253.1, or an emergency protective order under § 16.1-253.4. Such counsel shall have no prosecutorial authority except as granted in writing by the attorney for the Commonwealth for the jurisdiction in which the representation is to occur.

Any attorney appointed under the provisions of this section shall be a volunteer and serve without compensation and shall be subject to any rules adopted by the court and approved by the Virginia Supreme Court providing for the establishment and conduct of a project providing pro bono services to victims of family abuse.

(1995, c. 806.)

§ 16.1-278.14. Criminal jurisdiction; protective orders; family offenses.

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.

(1991, c. 534; 1992, c. 742; 1996, c. 866.)

§ 16.1-279.1. Protective order in cases of family abuse.

A. In cases of family abuse, 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;
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. 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;
5. Requiring that the respondent provide suitable alternative housing for the petitioner and, if appropriate, any other family or household member;
6. Ordering the respondent to participate in treatment, counseling or other programs as the court deems appropriate; and
7. 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](#).

B. The protective order may be issued for a specified period; however, unless otherwise authorized by law, a protective order may not be issued under this section for a period longer than two years. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. The clerk shall, upon receipt, forward forthwith an attested copy of the order to the local police department or sheriff's office 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 system 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 system. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded and entered in the system as described above.

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

D. 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.

E. 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 forward forthwith an attested copy of the order to the local police department or sheriff's office 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 system 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 system.

Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy available of any foreign order filed with that court. A law-enforcement officer may, in the performance of his duties, rely upon a copy of a foreign protective order or other suitable evidence which has been provided to him by any source and may also rely upon the statement of any person protected by the order that the order remains in effect.

F. 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.

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

H. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

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

(1984, c. 631; 1987, c. 497; 1992, c. 886; 1994, cc. 360, 521, 739, 907; 1996, cc. 866, 900, 945; 1997, c. 603; 1998, c. 684; 2000, cc. 34, 654; 2002, cc. 508, 810, 818; **2004, cc. 972, 980.**)

§ 18.2-57.2. Assault and battery against a family or household member.

A. Any person who commits an assault and battery against a family or household member is guilty of a Class 1 misdemeanor.

B. Upon a conviction for assault and battery against a family or household member, where it is alleged in the warrant, information, or indictment on which a person is convicted, that such person has been previously convicted of two offenses against a family or household member of (i) assault and battery against a family or household member in violation of this section, (ii) malicious wounding in violation of § [18.2-51](#), (iii) aggravated malicious wounding in violation of § [18.2-51.2](#), (iv) malicious bodily injury by means of a substance in violation of § [18.2-52](#), or (v) an offense under the law of any other jurisdiction which has the same elements of any of the above offenses, in any combination, all of which occurred within a period of 20 years, and each of which occurred on a different date, such person is guilty of a Class 6 felony.

C. Whenever a warrant for a violation of this section is issued, the magistrate shall issue an emergency protective order as authorized by § [16.1-253.4](#), except if the defendant is a minor, an emergency protective order shall not be required.

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

(1991, c. 238; 1992, cc. 526, 886; 1996, c. 866; 1997, c. 603; 1999, cc. 697, 721, 807; **2004, cc. 448, 738.**)

§ 18.2-57.3. Persons charged with first offense of assault and battery against a family or household member may be placed on probation; conditions; education and treatment programs; costs and fees; violations; discharge.

When a person who is no younger than 18 years of age or who is considered an adult at the time of the proceeding and who has not previously been convicted of any offense under this article or under any statute of the United States or of any state or any ordinance of any local government relating to assault and battery against a family or household member or has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of not guilty to a violation of § [18.2-57.2](#), the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions.

As a term or condition, the court may, where assessment or evaluation services are available, require the accused to be assessed or evaluated and, based on

the results of the assessment or evaluation, require the accused to enter an education or treatment program indicated by the assessment or evaluation, if available. The court, when assessment or evaluation services are not available, may require education or treatment services such as, in the opinion of the court, may be best suited to the needs of the accused.

The court shall require the person entering such education or treatment program under the provisions of this section to pay all or part of the costs of the program, including the costs of any assessment, evaluation, testing, education and treatment, based upon the accused's ability to pay unless the person is determined by the court to be indigent.

Following the finding of facts that would justify a finding of guilt, the court may order the defendant be placed in a local community-based probation program established pursuant to Article 9 (§ [9.1-173](#) et seq.) of Chapter 1 of Title 9.1, if such program is available. As a condition of local community-based probation, if available, the court shall require the accused to successfully complete all treatment and/or education programs required by the assessment or evaluation and to be of good behavior during the period of supervised probation and for a period of not less than two years following the completion of probation. The court shall order the defendant to be of good behavior for a period of not less than two years following the finding of facts that would justify a finding of guilt when no supervised probation is ordered.

The court shall, unless done at arrest, order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting.

Upon violation of a term or condition of supervised probation or of the period of good behavior, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings. As such, no charges dismissed pursuant to this section shall be eligible for expungement under § [19.2-392.2](#).

Notwithstanding any other provision of this section, whenever a court places an individual on probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction for purposes of § [18.2-308](#).

(1999, c. 963; 2000, c. 1040; 2003, cc. 33, 38; **2004, c. 377.**)

§ 18.2-57.4. Reporting findings of assault and battery to military family advocacy representatives.

If any active duty member of the United States Armed Forces is found guilty of a violation of § [18.2-57.2](#) or § [18.2-57.3](#), the court shall report the conviction to family advocacy representatives of the United States Armed Forces.

(2004, c. 681.)

§ 18.2-60. Threats of death or bodily injury to a person or member of his family; threats to commit serious bodily harm to persons on school property; penalty.

A. 1. Any person who knowingly communicates, in a writing, including an electronically transmitted communication producing a visual or electronic message, a threat to kill or do bodily injury to a person, regarding that person or any member of his family, and the threat places such person in reasonable apprehension of death or bodily injury to himself or his family member, is guilty of a Class 6 felony. However, any person who violates this subsection with the intent to commit an act of terrorism as defined in § 18.2-46.4 is guilty of a Class 5 felony.

2. Any person who communicates a threat, in a writing, including an electronically transmitted communication producing a visual or electronic message, to kill or do bodily harm, (i) on the grounds or premises of any elementary, middle or secondary school property, (ii) at any elementary, middle or secondary school-sponsored event or (iii) on a school bus to any person or persons, regardless of whether the person who is the object of the threat actually receives the threat, and the threat would place the person who is the object of the threat in reasonable apprehension of death or bodily harm, is guilty of a Class 6 felony.

B. Any person who orally makes a threat to any employee of any elementary, middle or secondary school, while on a school bus, on school property or at a school-sponsored activity, to kill or to do bodily injury to such person, is guilty of a Class 1 misdemeanor.

A prosecution pursuant to this section may be either in the county, city or town in which the communication was made or received.

(Code 1950, § 18.1-257; 1960, c. 358; 1973, c. 118; 1975, cc. 14, 15; 1994, c. 265; 1998, cc. 687, 788; 2001, cc. 644, 653; 2002, cc. 588, 623.)

§ 18.2-60.3. Stalking; penalty.

A. Any person, except a law-enforcement officer, as defined in § 9.1-101, and acting in the performance of his official duties, and a registered private

investigator, as defined in § 9.1-138, who is regulated in accordance with § 9.1-139 and acting in the course of his legitimate business, who on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member is guilty of a Class 1 misdemeanor.

B. A third or subsequent conviction occurring within five years of a conviction for an offense under this section or for a similar offense under the law of any other jurisdiction shall be a Class 6 felony.

C. A person may be convicted under this section irrespective of the jurisdiction or jurisdictions within the Commonwealth wherein the conduct described in subsection A occurred, if the person engaged in that conduct on at least one occasion in the jurisdiction where the person is tried. Evidence of any such conduct that occurred outside the Commonwealth may be admissible, if relevant, in any prosecution under this section provided that the prosecution is based upon conduct occurring within the Commonwealth.

D. Upon finding a person guilty under this section, the court shall, in addition to the sentence imposed, issue an order prohibiting contact between the defendant and the victim or the victim's family or household member.

E. The Department of Corrections, sheriff or regional jail director shall give notice prior to the release from a state correctional facility or a local or regional jail of any person incarcerated upon conviction of a violation of this section, to any victim of the offense who, in writing, requests notice, or to any person designated in writing by the victim. The notice shall be given at least fifteen days prior to release of a person sentenced to a term of incarceration of more than thirty days or, if the person was sentenced to a term of incarceration of at least forty-eight hours but no more than thirty days, twenty-four hours prior to release. If the person escapes, notice shall be given as soon as practicable following the escape. The victim shall keep the Department of Corrections, sheriff or regional jail director informed of the current mailing address and telephone number of the person named in the writing submitted to receive notice.

All information relating to any person who receives or may receive notice under this subsection shall remain confidential and shall not be made available to the person convicted of violating this section.

For purposes of this subsection, "release" includes a release of the offender from a state correctional facility or a local or regional jail (i) upon completion of his term of incarceration or (ii) on probation or parole.

No civil liability shall attach to the Department of Corrections nor to any sheriff or regional jail director or their deputies or employees for a failure to comply with the requirements of this subsection.

F. For purposes of this section:

"Family or household member" has the same meaning as provided in § 16.1-228. (1992, c. 888; 1994, cc. 360, 521, 739; 1995, c. 824; 1996, cc. 540, 866; 1998, c. 570; 2001, c. 197; 2002, c. 377.)

§ 18.2-60.4. Violation of stalking protective orders; penalty.

Any person who violates any provision of a protective order issued pursuant to §§ 19.2-152.8, 19.2-152.9 or § 19.2-152.10 is guilty of a Class 1 misdemeanor. Conviction hereunder shall bar a finding of contempt for the same act. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § 19.2-152.10 for a specified period not exceeding two years from the date of conviction.

(1998, c. 569; 2003, c. 219.)

§ 18.2-61. Rape.

A. If any person has sexual intercourse with a complaining witness who is not his or her spouse or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person, or (ii) through the use of the complaining witness's mental incapacity or physical helplessness, or (iii) with a child under age thirteen as the victim, he or she shall be guilty of rape.

B. If any person has sexual intercourse with his or her spouse and such act is accomplished against the spouse's will by force, threat or intimidation of or against the spouse or another, he or she shall be guilty of rape.

C. A violation of this section shall be punishable, in the discretion of the court or jury, by confinement in a state correctional facility for life or for any term not less than five years. There shall be a rebuttable presumption that a juvenile over the age of 10 but less than 12, does not possess the physical capacity to commit a violation of this section. In any case deemed appropriate by the court, all or part of any sentence imposed for a violation of subsection B may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court

finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

D. Upon a finding of guilt under subsection B in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

(Code 1950, § 18.1-44; 1960, c. 358; 1972, c. 394; 1975, cc. 14, 15, 606; 1981, c. 397; 1982, c. 506; 1986, c. 516; 1994, cc. 339, 772, 794; 1997, c. 330; 1999, c. 367; 2002, cc. 810, 818.)

§ 18.2-67.2:1. Marital sexual assault.

A. An accused shall be guilty of marital sexual assault if (i) he or she engages in sexual intercourse, cunnilingus, fellatio, anallingus or anal intercourse with his or her spouse, or penetrates the labia majora or anus of his or her spouse with any object other than for a bona fide medical purpose, or causes such spouse to so penetrate his or her own body with an object, and (ii) such act is accomplished against the spouse's will by force or a present threat of force or intimidation of or against the spouse or another person.

B. A violation of this section shall be punishable by confinement in a state correctional facility for a term of not less than one year nor more than twenty years or, in the discretion of the court or jury, by confinement in jail for not more than twelve months and a fine of not more than \$1,000, either or both. In any case deemed appropriate by the court, all or part of any sentence may be suspended upon the defendant's completion of counseling or therapy if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on

probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may enter an adjudication of guilt and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

D. A violation of this section shall constitute a lesser, included offense of the respective violation set forth in §§ 18.2-61 B, 18.2-67.1 B or § 18.2-67.2 B. (1986, c. 516; 1994, cc. 772, 794; 1999, c. 367.)

§ 18.2-119. Trespass after having been forbidden to do so; penalties.

If any person without authority of law goes upon or remains upon the lands, buildings or premises of another, or any portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian or other person lawfully in charge thereof, or after having been forbidden to do so by a sign or signs posted by such persons or by the holder of any easement or other right-of-way authorized by the instrument creating such interest to post such signs on such lands, structures, premises or portion or area thereof at a place or places where it or they may be reasonably seen, or if any person, whether he is the owner, tenant or otherwise entitled to the use of such land, building or premises, goes upon, or remains upon such land, building or premises after having been prohibited from doing so by a court of competent jurisdiction by an order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.2 through 16.1-278.6, 16.1-278.8, 16.1-278.14, 16.1-278.15, 16.1-279.1, 19.2-152.8, 19.2-152.9 or § 19.2-152.10 or an ex parte order issued pursuant to § 20-103, and after having been served with such order, he shall be guilty of a Class 1 misdemeanor. This section shall not be construed to affect in any way the provisions of §§ 18.2-132 through 18.2-136.

(Code 1950, § 18.1-173; 1960, c. 358; 1975, cc. 14, 15; 1982, c. 169; 1987, cc. 625, 705; 1991, c. 534; 1998, cc. 569, 684.)

§ 18.2-152.7:1. Harassment by computer; penalty.

If any person, with the intent to coerce, intimidate, or harass any person, shall use a computer or computer network to communicate obscene, vulgar, profane, lewd, lascivious, or indecent language, or make any suggestion or proposal of an obscene nature, or threaten any illegal or immoral act, he shall be guilty of a Class 1 misdemeanor.

(2000, c. 849.)

§ 18.2-164. Unlawful use of, or injury to, telephone and telegraph lines; copying or obstructing messages.

Any person who shall:

- (1) Maliciously injure, molest, cut down or destroy any telephone or telegraph line, wire, cable or pole, or the material or property belonging thereto; or
- (2) Maliciously cut, break, tap or make any connection with any telephone or telegraph line, wire, cable or instrument of any telegraph or telephone company which has legally acquired the right-of-way by purchase, condemnation, or otherwise; or
- (3) Maliciously copy in any unauthorized manner any message, either social, business, or otherwise, passing over any telephone or telegraph line, wire or cable in this Commonwealth; or
- (4) Willfully or maliciously prevent, obstruct or delay by any means or contrivance whatsoever the sending, conveyance or delivery in this Commonwealth of any authorized communication by or through any telephone or telegraph line, wire or cable under the control of any telephone or telegraph company doing business in this Commonwealth; or
- (5) Maliciously aid, agree with, employ or conspire with any unauthorized person or persons unlawfully to do or cause to be done any of the acts hereinbefore mentioned, shall be guilty of a Class 2 misdemeanor.
(Code 1950, § 18.1-156; 1960, c. 358; 1975, cc. 14, 15; 2002, cc. 810, 818.)

§ 18.2-308.1:4. Purchase or transportation of firearm by persons subject to protective orders; penalty.

It shall be unlawful for any person who is subject to (i) a protective order entered pursuant to §§ [16.1-253](#), [16.1-253.1](#), [16.1-253.4](#), [16.1-279.1](#), [19.2-152.8](#), [19.2-152.9](#), or § [19.2-152.10](#); (ii) an order issued pursuant to subsection B of § [20-103](#); (iii) an order entered pursuant to subsection D of § [18.2-60.3](#); or (iv) an order issued by a tribunal of another state, the United States or any of its territories, possessions or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to those cited in clauses (i), (ii), or (iii) to purchase or transport any firearm while the order is in effect. Any person with a concealed handgun permit shall be prohibited from carrying any concealed firearm, and shall surrender his permit to the court entering the order, for the duration of any protective order referred to herein. A violation of this section is a Class 1 misdemeanor.

(1994, c. 907; 1996, c. 866; 1998, c. 569; 2001, c. 357; 2002, cc. 783, 865; **2004, c. 995.**)

§ 18.2-369. Abuse and neglect of incapacitated adults; penalty.

A. It shall be unlawful for any responsible person to abuse or neglect any incapacitated adult as defined in this section. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect does not result in serious bodily injury or disease to the incapacitated adult shall be guilty of a Class 1 misdemeanor. Any responsible person who is convicted of a second or subsequent offense under this subsection shall be guilty of a Class 6 felony.

B. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in serious bodily injury or disease to the incapacitated adult shall be guilty of a Class 4 felony.

C. For purposes of this section:

"Abuse" means (i) knowing and willful conduct that causes physical injury or pain or (ii) knowing and willful use of physical restraint, including confinement, as punishment, for convenience or as a substitute for treatment, except where such conduct or physical restraint, including confinement, is a part of care or treatment and is in furtherance of the health and safety of the incapacitated person.

"Incapacitated adult" means any person 18 years or older who is impaired by reason of mental illness, mental retardation, physical illness or disability, advanced age or other causes to the extent the adult lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his well-being.

"Neglect" means the knowing and willful failure by a responsible person to provide treatment, care, goods or services which results in injury to the health or endangers the safety of an incapacitated adult.

"Responsible person" means a person who has responsibility for the care, custody or control of an incapacitated person by operation of law or who has assumed such responsibility voluntarily, by contract or in fact.

"Serious bodily injury or disease" shall include but not be limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, or (vi) life - threatening internal injuries or conditions, whether or not caused by trauma.

D. No responsible person shall be in violation of this section whose conduct was (i) in accordance with the informed consent of the incapacitated person or a person authorized to consent on his behalf; (ii) in accordance with a declaration

by the incapacitated person under the Natural Death Act of Virginia (§ 54.1-2981 et seq.) or with the provisions of a valid medical power of attorney; (iii) in accordance with the wishes of the incapacitated person or a person authorized to consent on behalf of the incapacitated person and in accord with the tenets and practices of a church or religious denomination; (iv) incident to necessary movement of, placement of or protection from harm to the incapacitated person; or (v) a bona fide, recognized or approved practice to provide medical care. (1992, c. 551; 1994, c. 620; 2000, c. 796; 2001, c. 181; **2004, c. 863.**)

§ 18.2-427. Use of profane, threatening or indecent language over public airways.

If any person shall use obscene, vulgar, profane, lewd, lascivious, or indecent language, or make any suggestion or proposal of an obscene nature, or threaten any illegal or immoral act with the intent to coerce, intimidate, or harass any person, over any telephone or citizens band radio, in this Commonwealth, he shall be guilty of a Class 1 misdemeanor. (Code 1950, § 18.1-238; 1960, c. 358; 1964, c. 577; 1975, cc. 14, 15; 1976, c. 312; 1984, c. 592.)

§ 18.2-428. Giving certain false information to another by telephone.

If any person maliciously advises or informs another over any telephone in this Commonwealth of the death of, accident to, injury to, illness of, or disappearance of some third party, knowing the same to be false, he shall be guilty of a Class 1 misdemeanor. (Code 1950, § 18.1-238.1; 1962, c. 225; 1975, cc. 14, 15.)

§ 18.2-429. Causing telephone to ring with intent to annoy.

Any person who, with or without intent to communicate but with intent to annoy any other person, causes any telephone or digital pager, not his own, to ring or to otherwise signal, and any person who permits or condones the use of any telephone under his control for such purpose shall be guilty of a Class 3 misdemeanor.

Any person who, with or without intent to converse, but with intent to annoy, harass, hinder or delay emergency personnel in the performance of their duties as such, causes a telephone to ring, which is owned or leased for the purpose of receiving emergency calls by a public or private entity providing fire, police or emergency medical service, and any person who knowingly permits the use of a telephone under his control for such purpose, shall be guilty of a Class 1 misdemeanor.

(Code 1950, § 18.1-238.2; 1962, c. 495; 1975, cc. 14, 15; 1989, c. 59; 1995, cc. 410, 478, 791.)

§ 19.2-81. Arrest without warrant authorized in certain cases.

The following officers shall have the powers of arrest as provided in this section:

1. Members of the State Police force of the Commonwealth,
2. Sheriffs of the various counties and cities, and their deputies,
3. Members of any county police force or any duly constituted police force of any city or town of the Commonwealth,
4. The Commissioner, members and employees of the Marine Resources Commission granted the power of arrest pursuant to § [28.2-900](#),
5. Regular game wardens appointed pursuant to § [29.1-200](#),
6. United States Coast Guard and United States Coast Guard Reserve commissioned, warrant, and petty officers authorized under § [29.1-205](#) to make arrests, and
7. The special policemen of the counties as provided by § [15.2-1737](#), provided such officers are in uniform, or displaying a badge of office.

Such officers may arrest, without a warrant, any person who commits any crime in the presence of the officer and any person whom he has reasonable grounds or probable cause to suspect of having committed a felony not in his presence.

Any such officer may arrest without a warrant any person whom the officer has probable cause to suspect of operating a watercraft or motor boat (i) while intoxicated in violation of subsection B of § [29.1-738](#) or (ii) in violation of an order issued pursuant to § [29.1-738.4](#), in his presence, and may thereafter transfer custody of the person suspected of the violation to another officer, who may obtain a warrant based upon statements made to him by the arresting officer.

Any such officer may, at the scene of any accident involving a motor vehicle, watercraft as defined in § [29.1-712](#) or motorboat, or at any hospital or medical facility to which any person involved in such accident has been transported, or in the apprehension of any person charged with the theft of any motor vehicle, on any of the highways or waters of the Commonwealth, upon reasonable grounds to believe, based upon personal investigation, including information obtained from eyewitnesses, that a crime has been committed by any person then and there present, apprehend such person without a warrant of arrest. In addition, such officer may, within three hours of the occurrence of any such accident involving a motor vehicle, arrest without a warrant at any location any person whom the officer has probable cause to suspect of driving or operating such

motor vehicle while intoxicated in violation of §§ [18.2-266](#), [18.2-266.1](#), [46.2-341.24](#), or a substantially similar ordinance of any county, city, or town in the Commonwealth.

Such officers may arrest, without a warrant, persons duly charged with a crime in another jurisdiction upon receipt of a photocopy of a warrant, telegram, computer printout, facsimile printout, a radio, telephone or teletype message, in which photocopy of a warrant, telegram, computer printout, facsimile printout, radio, telephone or teletype message shall be given the name or a reasonably accurate description of such person wanted and the crime alleged.

Such officers may arrest, without a warrant, for an alleged misdemeanor not committed in his presence when the officer receives a radio message from his department or other law-enforcement agency within the Commonwealth that a warrant for such offense is on file.

Such officers may also arrest without a warrant for an alleged misdemeanor not committed in their presence involving (i) shoplifting in violation of § [18.2-96](#) or § [18.2-103](#) or a similar local ordinance, (ii) carrying a weapon on school property in violation of § [18.2-308.1](#), (iii) assault and battery, (iv) brandishing a firearm in violation of § [18.2-282](#), or (v) destruction of property in violation of § [18.2-137](#), when such property is located on premises used for business or commercial purposes, or a similar local ordinance, when any such arrest is based on probable cause upon reasonable complaint of the person who observed the alleged offense. The arresting officer may issue a summons to any person arrested under this section for a misdemeanor violation involving shoplifting.

(Code 1950, § 19.1-100; 1960, c. 366; 1974, c. 241; 1975, c. 495; 1976, cc. 515, 570; 1977, c. 97; 1979, c. 268; 1982, c. 272; 1983, c. 206; 1984, c. 534; 1985, c. 507; 1988, cc. 353, 744, 752, 853; 1989, c. 726; 1990, cc. 635, 744, 784; 1995, c. 465; 1996, cc. 866, 929, 1015; 1998, c. 684; **2004, c. 949.**)

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

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

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

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

C. Regardless of whether an arrest is made, the officer shall file a written report with his department, which shall state whether any arrests were made, and if so, the number of arrests, specifically including any incident in which he has probable cause to believe family abuse has occurred, and, where required, including a complete statement in writing that there are special circumstances that would dictate a course of action other than an arrest. The officer shall provide the allegedly abused person, both orally and in writing, information regarding the legal and community resources available to the allegedly abused person. Upon request of the allegedly abused person, the department shall make a summary of the report available to the allegedly abused person.

D. In every case in which a law-enforcement officer makes an arrest under this section, he shall petition for an emergency protective order as authorized in § [16.1-253.4](#) when the person arrested and taken into custody is brought before the magistrate, except if the person arrested is a minor, a petition for an emergency protective order shall not be required. Regardless of whether an arrest is made, if the officer has probable cause to believe that a danger of acts of family abuse exists, the law-enforcement officer shall seek an emergency protective order under § [16.1-253.4](#), except if the suspected abuser is a minor, a petition for an emergency protective order shall not be required.

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

F. The definition of "family or household member" in § [16.1-228](#) applies to this section.

G. As used in this section, a "law-enforcement officer" means (i) any 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 this Commonwealth and (ii) any 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.

(1991, c. 715; 1992, c. 886; 1995, cc. 413, 433; 1996, c. 866; 1997, c. 603; 1998, c. 569; 1999, cc. 697, 721, 807; 2002, cc. 810, 818; **2004, c. 1016.**)

§ 19.2-81.4. Policies and procedures for the Virginia State Police and local law-enforcement officials.

The Virginia State Police and each local police and sheriff's department shall establish an arrest policy and procedures to implement this section. Any local police or sheriff's department is authorized to adopt an arrest policy that prescribes additional requirements under this section. Any policies and procedures established under this section shall at a minimum provide guidance to law-enforcement officers on the following:

1. The department's arrest policy;
2. The standards for determining who is the predominant physical aggressor pursuant to § [19.2-81.3](#);
3. The standards for completion of a required incident report to be filed with the department including the existence of any special circumstances which would dictate a course of action other than arrest;
4. The department's policy on providing transportation to an allegedly abused person;
5. The legal and community resources available to allegedly abused persons in the department's jurisdiction;
6. The department's policy on domestic violence incidents involving law-enforcement officers; and
7. The department's policy on the handling of cases involving repeat offenders of family abuse or domestic violence.

(1996, c. 866; **2004, cc. 972, 980, 1016.**)

§ 19.2-151. Satisfaction and discharge of assault and similar charges.

When a person is in jail or under a recognizance to answer a charge of assault and battery or other misdemeanor, or has been indicted for an assault and battery or other misdemeanor for which there is a remedy by civil action, unless the offense was committed (i) by or upon any law-enforcement officer, (ii) riotously in violation of §§ 18.2-404 to 18.2-407, (iii) against a family or household member in violation of § 18.2-57.2, or (iv) with intent to commit a felony, if the person injured appears before the court which made the commitment or took the recognizance, or before the court in which the indictment is pending, and

acknowledges in writing that he has received satisfaction for the injury, the court may, in its discretion, by an order, supersede the commitment, discharge the recognizance, or dismiss the prosecution, upon payment by the defendant of costs accrued to the Commonwealth or any of its officers.

(Code 1950, § 19.1-18; 1960, c. 366; 1968, c. 639; 1975, c. 495; 1997, c. 532; 1999, c. 963.)

§ 19.2-152.8. Emergency protective orders authorized in cases of stalking and acts of violence.

A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person.

B. When a law-enforcement officer, an allegedly stalked person or an alleged victim of a criminal offense resulting in a serious bodily injury to the alleged victim asserts under oath to a judge or magistrate that such person is being or has been subjected to stalking or a criminal offense resulting in a serious bodily injury to the alleged victim and on that assertion or other evidence the judge or magistrate finds that (i) there is probable danger of a further such offense being committed by the respondent against the alleged victim and (ii) a warrant for the arrest of the respondent has been issued, the judge or magistrate shall issue an ex parte emergency protective order imposing one or more of the following conditions on the respondent:

1. Prohibiting acts of violence or acts of stalking in violation of § 18.2-60.3;
2. Prohibiting such contacts by the respondent with the alleged victim of such crime or such person's family or household members as the judge or magistrate deems necessary to protect the safety of such persons; and
3. Such other conditions as the judge or magistrate deems necessary to prevent acts of stalking, or criminal offenses resulting in injury to person or property, or communication or other contact of any kind by the respondent.

C. An emergency protective order issued pursuant to this section shall expire 72 hours after issuance. If the expiration of the 72-hour period occurs at a time that the court is not in session, the emergency protective order shall be extended until 5 p.m. of the next business day that the court which issued the order is in session. The respondent 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.

D. A law-enforcement officer may request an emergency protective order pursuant to this section 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 alleged victim of such crime.

E. Upon receipt of the order by a local law-enforcement agency for service, the 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 system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court or magistrate may transfer information electronically to the Virginia Criminal Information Network system. A copy of an emergency protective order issued pursuant to this section shall be served upon the respondent as soon as possible, and upon service, the agency making service shall enter the date and time of service into the Virginia Criminal Information Network system. One copy of the order shall be given to the alleged victim of such crime. 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 appropriate 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 be forwarded and entered in the system as described above. Upon request, the clerk shall provide the alleged victim of such crime with information regarding the date and time of service.

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

G. As used in this section, a "law-enforcement officer" means any (i) person who is a 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.

H. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of

employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

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

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

(1997, c. 831; 1998, cc. 569, 684; 1999, c. 371; 2001, c. 474; 2002, cc. 507, 706, 810, 818; 2003, c. 730.)

§ 19.2-152.9. Preliminary protective orders in cases of stalking and acts of violence.

A. Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable period of time, subjected to stalking or a criminal offense resulting in a serious bodily injury to the petitioner, and (ii) a warrant has been issued for the arrest of the alleged perpetrator of such act or acts, the court may issue a preliminary protective order against the alleged perpetrator in order to protect the health and safety of the petitioner or any family or household member of the petitioner. 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 stalking or another criminal offense that may result in a serious bodily injury to the petitioner or evidence sufficient to establish probable cause that stalking or a criminal offense resulting in a serious bodily injury to the petitioner has recently occurred shall constitute good cause.

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

1. Prohibiting criminal offenses that may result in injury to person or property or acts of stalking in violation of § 18.2-60.3;
2. Prohibiting such other contacts by the respondent with the petitioner or the petitioner's family or household members as the court deems necessary for the health and safety of such persons; and
3. Such other conditions as the court deems necessary to prevent acts of stalking, criminal offenses that may result in injury to person or property, or communication or other contact of any kind by the respondent.

B. Upon receipt of the order by a local law-enforcement agency for service, the 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 system 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 system. A copy of a preliminary protective order shall be served as soon as possible on the alleged stalker in person as provided in § 16.1-264, and upon service, the agency making service shall enter the date and time of service into the Virginia criminal information network system. 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. 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 forward forthwith an attested copy of the preliminary protective order to the local police department or sheriff's office which shall, upon receipt, enter into the Virginia Criminal Information Network system any other information required by the State Police which was not previously entered. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded and entered into the Virginia Criminal Information Network system as described above.

C. The preliminary order is effective upon personal service on the alleged perpetrator. Except as otherwise provided in § 16.1-253.2, a violation of the order shall constitute contempt of court.

D. At a full hearing on the petition, the court may issue a protective order pursuant to § 19.2-152.10 if the court finds that the petitioner has proven the allegation of a criminal offense resulting in a serious bodily injury to the petitioner or stalking by a preponderance of the evidence.

E. No fees shall be charged for filing or serving petitions pursuant to this section.

F. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

G. As used in this section, "copy" includes a facsimile copy. (1997, c. 831; 1998, cc. 569, 684; 1999, c. 371; 2001, c. 101; 2002, cc. 507, 810, 818; 2003, c. 730.)

§ 19.2-152.10. Protective order in cases of stalking and acts of violence.

A. The court may issue a protective order pursuant to this chapter to protect the health and safety of the petitioner and family or household members of a petitioner upon (i) the issuance of a warrant for a criminal offense resulting in a serious bodily injury to the petitioner, or a violation of § 18.2-60.3, (ii) a hearing held pursuant to subsection D of § 19.2-152.9, or (iii) a conviction for a criminal offense resulting in a serious bodily injury to the petitioner, or a violation of § 18.2-60.3. 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 criminal offenses that may result in injury to person or property, or acts of stalking in violation of § 18.2-60.3;
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; and
3. Any other relief necessary to prevent criminal offenses that may result in injury to person or property, or acts of stalking, communication or other contact of any kind by the respondent.

B. The protective order may be issued for a specified period; however, unless otherwise authorized by law, a protective order may not be issued under this section for a period longer than two years. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. The clerk shall upon receipt forward forthwith an attested copy of the order to the local police department or sheriff's office 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 system 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 system. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded and entered into the system as described above.

C. Except as otherwise provided, a violation of a protective order issued under this section shall constitute contempt of court.

D. 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.

E. 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 appropriate district court by filing with the court, an attested or exemplified copy of the order. Upon such a filing, the clerk shall forward forthwith an attested copy of the order to the local police department or sheriff's office 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 system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52.

Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy available of any foreign order filed with that court. A law-enforcement officer may, in the performance of his duties, rely upon a copy of a foreign protective order or other suitable evidence which has been provided to him by any source and may also rely upon the statement of any person protected by the order that the order remains in effect.

F. Either party may at any time file a written motion with the court requesting a hearing to dissolve or modify the order. Proceedings to modify or dissolve a protective order shall be given precedence on the docket of the court.

G. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

H. No fees shall be charged for filing or serving petitions pursuant to this section.

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

(1997, c. 831; 1998, cc. 569, 684; 1999, c. 371; 2002, cc. 507, 810, 818; 2003, c. 730.)

§ 19.2-303.4. Payment of costs when proceedings deferred and defendant placed on probation.

A circuit or district court, which has deferred further proceedings, without entering a judgment of guilt, and placed a defendant on probation subject to terms and conditions pursuant to §§ 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-67.2:1, 18.2-251 or § 19.2-303.2, shall impose upon the defendant costs.

(1995, c. 485; 2000, c. 186; 2002, c. 831.)

§ 20-103. Court may make orders pending suit for divorce, custody or visitation, etc.

A. In suits for divorce, annulment and separate maintenance, and in proceedings arising under subdivision A 3 or subsection L of § [16.1-241](#), the court having jurisdiction of the matter may, at any time pending a suit pursuant to this chapter, in the discretion of such court, make any order that may be proper (i) to compel a spouse to pay any sums necessary for the maintenance and support of the petitioning spouse, including an order that the other spouse provide health care coverage for the petitioning spouse, unless it is shown that such coverage cannot be obtained, (ii) to enable such spouse to carry on the suit, (iii) to prevent either spouse from imposing any restraint on the personal liberty of the other spouse, (iv) to provide for the custody and maintenance of the minor children of the parties, including an order that either party provide health care coverage for the children, (v) to provide support, calculated in accordance with § [20-108.2](#), for any child of the parties to whom a duty of support is owed and to continue to support any child over the age of 18 who meets the requirements set forth in subsection C of § [20-124.2](#), (vi) for the exclusive use and possession of the family residence during the pendency of the suit, (vii) to preserve the estate of either spouse, so that it be forthcoming to meet any decree which may be made in the suit, or (viii) to compel either spouse to give security to abide such decree. The parties to any petition where a child whose custody, visitation, or support is contested shall show proof that they have attended within the 12 months prior to their court appearance or that they shall attend within 45 days thereafter an educational seminar or other like program conducted by a qualified person or organization approved by the court except that the court may require the parties to attend such seminar or program in uncontested cases only if the court finds good cause. The seminar or other program shall be a minimum of four hours in length and shall address the effects of separation or divorce on children, parenting responsibilities, options for conflict resolution and financial responsibilities. Once a party has completed one educational seminar or other like program, the

required completion of additional programs shall be at the court's discretion. Parties under this section shall include natural or adoptive parents of the child, or any person with a legitimate interest as defined in § [20-124.1](#). The fee charged a party for participation in such program shall be based on the party's ability to pay; however, no fee in excess of \$50 may be charged. Whenever possible, before participating in mediation or alternative dispute resolution to address custody, visitation or support, each party shall have attended the educational seminar or other like program. The court may grant an exemption from attendance of such program for good cause shown or if there is no program reasonably available. Other than statements or admissions by a party admitting criminal activity or child abuse, no statement or admission by a party in such seminar or program shall be admissible into evidence in any subsequent proceeding.

B. In addition to the terms provided in subsection A, upon a showing by a party of reasonable apprehension of physical harm to that party by such party's family or household member as that term is defined in § [16.1-228](#), and consistent with rules of the Supreme Court of Virginia, the court may enter an order excluding that party's family or household member from the jointly owned or jointly rented family dwelling. In any case where an order is entered under this paragraph, pursuant to an ex parte hearing, the order shall not exclude a family or household member from the family dwelling for a period in excess of 15 days from the date the order is served, in person, upon the person so excluded. The order may provide for an extension of time beyond the 15 days, to become effective automatically. The person served may at any time file a written motion in the clerk's office requesting a hearing to dissolve or modify the order. Nothing in this section shall be construed to prohibit the court from extending an order entered under this subsection for such longer period of time as is deemed appropriate, after a hearing on notice to the parties.

C. In cases other than those for divorce in which a custody or visitation arrangement for a minor child is sought, the court may enter an order providing for custody, visitation or maintenance pending the suit as provided in subsection A. The order shall be directed to either parent or any person with a legitimate interest who is a party to the suit.

D. Orders entered pursuant to this section which provide for custody or visitation arrangements pending the suit shall be made in accordance with the standards set out in Chapter 6.1 (§ [20-124.1](#) et seq.) of this title. Orders entered pursuant to subsection B shall be certified by the clerk and forwarded as soon as possible to the local police department or sheriff's office which shall, on the date of 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 crime information network system established and maintained by the Department of State Police pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52. If the order is later dissolved or modified, a copy of the dissolution or modification shall also be certified, forwarded and entered in the system as described above.

E. An order entered pursuant to this section shall have no presumptive effect and shall not be determinative when adjudicating the underlying cause.

(Code 1919, § 5107; 1975, c. 644; 1982, c. 306; 1983, c. 253; 1989, c. 740; 1991, c. 60; 1994, cc. 518, 769; 1995, c. 674; 1996, cc. 767, 866, 879, 884; 1997, c. 605; 1998, c. 616; 2000, c. 586; 2003, cc. 31, 45; **2004, c. 732.**)

§ 20-124.3. Best interests of the child; visitation.

In determining best interests of a child for purposes of determining custody or visitation arrangements including any pendente lite orders pursuant to § [20-103](#), the court shall consider the following:

1. The age and physical and mental condition of the child, giving due consideration to the child's changing developmental needs;
2. The age and physical and mental condition of each parent;
3. The relationship existing between each parent and each child, giving due consideration to the positive involvement with the child's life, the ability to accurately assess and meet the emotional, intellectual and physical needs of the child;
4. The needs of the child, giving due consideration to other important relationships of the child, including but not limited to siblings, peers and extended family members;
5. The role that each parent has played and will play in the future, in the upbringing and care of the child;
6. The propensity of each parent to actively support the child's contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child;
7. The relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child, and the ability of each parent to cooperate in and resolve disputes regarding matters affecting the child;
8. The reasonable preference of the child, if the court deems the child to be of reasonable intelligence, understanding, age and experience to express such a preference;
9. Any history of family abuse as that term is defined in § [16.1-228](#). If the court finds such a history, the court may disregard the factors in subdivision 6; and
10. Such other factors as the court deems necessary and proper to the determination.

The judge shall communicate to the parties the basis of the decision either orally or in writing.

(1994, c. 769; 1999, c. 634; 2000, c. 466; **2004, c. 221.**)

§ 24.2-405. Persons who may obtain lists of registered voters.

A. The State Board shall furnish, at a reasonable price, lists of registered voters for their districts to (i) courts of the Commonwealth and the United States for jury selection purposes, (ii) candidates for election or political party nomination to further their candidacy, (iii) political party committees or officials thereof for political purposes only, (iv) political action committees that have filed a current statement of organization with the State Board pursuant to § [24.2-908](#), or with the Federal Elections Commission pursuant to federal law, for political purposes only, (v) incumbent officeholders to report to their constituents, and (vi) nonprofit organizations that promote voter participation and registration for that purpose only. The lists shall be furnished to no one else and used for no other purpose. However, the State Board is authorized to furnish information from the voter registration system to general registrars for their official use and to the Department of Motor Vehicles and other appropriate state agencies for maintenance of the voter registration system.

B. The State Board shall furnish, at a reasonable price, lists of the addresses of registered voters for their localities to local government census liaisons and their staffs for the sole purpose of providing address information to the United States Bureau of the Census. The State Board shall also furnish, at a reasonable price, such lists to the Clerk of the Senate and the Clerk of the House of Delegates for the sole purpose of maintaining a database of constituent addresses for the General Assembly. The information authorized under this subsection shall be furnished to no other person and used for no other purpose. No list furnished under this subsection shall contain the name of any registered voter. For the purpose of this subsection, the term "census liaison" shall have the meaning provided in 13 U.S.C. § 16.

C. In no event shall any list furnished under this section contain the social security number of any registered voter except a list furnished to a court of the Commonwealth or of the United States for jury selection purposes.

D. Any list furnished under subsection A of this section shall contain the post office box address in lieu of the residence street address for any active or retired law-enforcement officer, as defined in § [9.1-101](#) and in 5 U.S.C.A. § 8331 (20) but excluding officers whose duties relate to detention as defined in paragraphs (A) through (D) of § 8331 (20), who has furnished at the time of registration or subsequently, in addition to his street address, a post office box address located in the Commonwealth for use on such lists.

E. Any list furnished under subsection A of this section shall contain the post office box address in lieu of the residence street address for any party granted a protective order issued by or under the authority of any court of competent jurisdiction, including but not limited to courts of the Commonwealth of Virginia, who has furnished at the time of registration or subsequently, in addition to his street address, a post office box address located in the Commonwealth for use on such lists.

F. Any list furnished under subsection A shall contain the post office box address in lieu of the residence street address for any party who has furnished at the time of registration or subsequently, (i) in addition to his street address, a post office box address located in the Commonwealth for use on such lists and (ii) a signed written statement by the party that he is in fear for his personal safety from another person who has threatened or stalked him accompanied by evidence that he has filed a complaint with a magistrate or law-enforcement official against such other person. The statement furnished pursuant to clause (ii) of this subsection shall be subject to felony penalties for false statements pursuant to [§ 24.2-1016](#).

(1970, c. 462, § 24.1-23; 1971, Ex. Sess., c. 119; 1972, c. 620; 1973, c. 30; 1974, cc. 369, 428; 1975, c. 515; 1976, c. 616; 1978, c. 778; 1983, c. 348; 1993, cc. 144, 641; 1994, cc. 250, 656; 1995, c. 314; 1996, c. 251; 1999, c. 843; 2000, cc. 512, 556; 2001, cc. 612, 626; 2003, c. 1015; **2004, cc. 184, 410.**)

(Note: See also 24.2-406 and 24.2-418)

§ 32.1-283.3. Family violence fatality review teams established; model protocol and data management; membership; authority; confidentiality, etc.

A. The Chief Medical Examiner shall develop a model protocol for the development and implementation of local family violence fatality review teams (hereinafter teams) which shall include relevant procedures for conducting reviews of fatal family violence incidents. A "fatal family violence incident" means any fatality, whether homicide or suicide, occurring as a result of abuse between family members or intimate partners. The Chief Medical Examiner shall provide technical assistance to the local teams and serve as a clearinghouse for information.

B. Subject to available funding, the Chief Medical Examiner shall provide ongoing surveillance of fatal family violence occurrences and promulgate an annual report based on accumulated data.

C. Any county or city, or combination of counties, cities or counties and cities may establish a family violence fatality review team to examine fatal family violence incidents and to create a body of information to help prevent future family violence fatalities. The team shall have the authority to review the facts

and circumstances of all fatal family violence incidents that occur within its designated geographic area.

D. Membership in the team may include, but shall not be limited to: health care professionals, representatives from the local bar, attorneys for the Commonwealth, judges, law-enforcement officials, criminologists, the medical examiner, other experts in forensic medicine and pathology, family violence victim advocates, health department professionals, probation and parole professionals, adult and child protective services professionals, and representatives of family violence local coordinating councils.

E. Each team shall establish local rules and procedures to govern the review process prior to the first fatal family violence incident review conducted. The review of a death shall be delayed until any criminal investigations or prosecutions connected with the death are completed.

F. All information and records obtained or created regarding the review of a fatality shall be confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision A 54 of § 2.2-3705. All such information and records shall be used by the team only in the exercise of its proper purpose and function and shall not be disclosed. Such information or records shall not be subject to subpoena, subpoena duces tecum or discovery or be admissible in any criminal or civil proceeding. If available from other sources, however, such information and records shall not be immune from subpoena, subpoena duces tecum, discovery or introduction into evidence when obtained through such other sources solely because the information and records were presented to the team during a fatality review. No person who participated in the review nor any member of the team shall be required to make any statement as to what transpired during the review or what information was collected during the review. Upon the conclusion of the fatality review, all information and records concerning the victim and the family shall be returned to the originating agency or destroyed. However, the findings of the team may be disclosed or published in statistical or other form which shall not identify individuals. The portions of meetings in which individual cases are discussed by the team shall be closed pursuant to subdivision A 22 of § 2.2-3711. All team members, persons attending closed team meetings, and persons presenting information and records on specific fatalities to the team during closed meetings shall execute a sworn statement to honor the confidentiality of the information, records, discussions, and opinions disclosed during any closed meeting to review a specific death. Violations of this subsection shall be punishable as a Class 3 misdemeanor.

G. Members of teams, as well as their agents and employees, shall be immune from civil liability for any act or omission made in connection with participation in a family violence fatality review, unless such act or omission was the result of gross negligence or willful misconduct. Any organization, institution, or person furnishing information, data, testimony, reports or records to review teams as part

of such review, shall be immune from civil liability for any act or omission in furnishing such information, unless such act or omission was the result of gross negligence or willful misconduct.

(1999, cc. 849, 868.)

§ 63.2-1502. Establishment of Child-Protective Services Unit; duties.

There is created a Child-Protective Services Unit in the Department that shall have the following powers and duties:

1. To evaluate and strengthen all local, regional and state programs dealing with child abuse and neglect.
2. To assume primary responsibility for directing the planning and funding of child-protective services. This shall include reviewing and approving the annual proposed plans and budgets for protective services submitted by the local departments.
3. To assist in developing programs aimed at discovering and preventing the many factors causing child abuse and neglect.
4. To prepare and disseminate, including the presentation of, educational programs and materials on child abuse and neglect.
5. To provide educational programs for professionals required by law to make reports under this chapter.
6. To establish standards of training and provide educational programs to qualify workers in the field of child-protective services. Such standards of training shall include provisions regarding the legal duties of the workers in order to protect the constitutional and statutory rights and safety of children and families from the initial time of contact during investigation through treatment.
7. To establish standards of training and educational programs to qualify workers to determine whether complaints of abuse or neglect of a child in a private or state-operated hospital, institution or other facility, or public school, are founded.
8. To maintain staff qualified pursuant to Board regulations to assist local department personnel in determining whether an employee of a private or state-operated hospital, institution or other facility or an employee of a school board, abused or neglected a child in such hospital, institution, or other facility, or public school.
9. To monitor the processing and determination of cases where an employee of a private or state-operated hospital, institution or other facility, or an employee of a school board, is suspected of abusing or neglecting a child in such hospital, institution, or other facility, or public school.

10. To help coordinate child-protective services at the state, regional, and local levels with the efforts of other state and voluntary social, medical and legal agencies.

11. To maintain a child abuse and neglect information system that includes all cases of child abuse and neglect within the Commonwealth.

12. To provide for methods to preserve the confidentiality of all records in order to protect the rights of the child, and his parents or guardians.

13. To establish minimum training requirements for workers and supervisors on family abuse and domestic violence, including the relationship between domestic violence and child abuse and neglect.

(1975, c. 341, § 63.1-248.7; 1984, c. 734; 1993, c. 955; 2000, c. 500; 2002, c. 747; **2004, cc. 93, 233, 972, 980.**)

§ 63.2-1603. Protection of adults; definitions.

As used in this article:

"Adult" means any person 60 years of age or older, or any person 18 years of age or older who is incapacitated and who resides in the Commonwealth; provided, however, "adult" may include qualifying nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services.

"Emergency" means that an adult is living in conditions that present a clear and substantial risk of death or immediate and serious physical harm to himself or others.

"Incapacitated person" means any adult who is impaired by reason of mental illness, mental retardation, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out responsible decisions concerning his or her well-being.

(1977, c. 547, § 63.1-55.2; 1978, c. 749; 2002, c. 747; **2004, cc. 749, 1011.**)

§ 63.2-1604. Establishment of Adult Protective Services Unit; powers and duties.

There is hereby created the Adult Protective Services Unit within the Adult Services Program in the Department, which, in coordination with adult protective services programs in the local departments, shall have the following powers and duties:

1. To support, strengthen, and evaluate adult protective services programs at local departments;
2. To assist in developing and implementing programs to respond to and prevent adult abuse, neglect or exploitation;
3. To prepare, disseminate, and present educational programs and materials on adult abuse, neglect and exploitation to mandated reporters and the public;
4. To establish minimum standards of training and provide educational opportunities to qualify social workers in the field of adult protective services to determine whether reports of adult abuse, neglect, or exploitation are substantiated. The Department shall establish, and the Board shall approve, a uniform training program for adult protective services workers in the Commonwealth. All adult protective services workers shall complete such training within one year from the date of implementation of the training program or within the first year of their employment;
5. To develop policies and procedures to guide the work of persons in the field of adult protective services;
6. To prepare and disseminate statistical information on adult protective services in Virginia;
7. To operate the adult protective services 24-hour toll-free hotline and provide training and technical assistance to the hotline staff;
8. To provide coordination among the adult protective services program and other state agencies; and
9. To work collaboratively with other agencies in the Commonwealth to facilitate the reporting and investigation of suspected adult abuse, neglect, or exploitation. (1998, c. 149, § 63.1-55.02; 2001, cc. 701, 716, 746; 2002, c. 747; **2004, cc. 749, 1011.**)

§ 63.2-1605. Protective services for adults by local departments.

A. Each local board, to the extent that federal or state matching funds are made available to each locality, shall provide, subject to supervision of the Commissioner and in accordance with regulations adopted by the Board, adult protective services for adults who are found to be abused, neglected or exploited and who meet one of the following criteria: (i) the adult is 60 years of age or older or (ii) the adult is 18 years of age or older and is incapacitated. The requirement to provide such services shall not limit the right of any individual to refuse to accept any of the services so offered, except as provided in § [63.2-1608](#).

B. Upon receipt of the report pursuant to § [63.2-1606](#), the local department shall determine the validity of such report and shall initiate an investigation within 24 hours of the time the report is received in the local department. Local departments shall consider valid any report meeting all of the following criteria: (i) the subject of the report is an adult as defined in this article, (ii) the report concerns a specific adult and there is enough information to locate the adult, and (iii) the report describes the circumstances of the alleged abuse, neglect, or exploitation.

C. The local department shall refer any appropriate matter and all relevant documentation to the appropriate licensing, regulatory, or legal authority for administrative action or criminal investigation.

D. If a local department is denied access to an adult for whom there is reason to suspect the need for adult protective services, then the local department may petition the circuit court for an order allowing access or entry or both. Upon a showing of good cause supported by an affidavit or testimony in person, the court may enter an order permitting such access or entry.

E. In any case of suspected adult abuse, neglect, or exploitation, local departments, with the informed consent of the adult or his legal representative, may take or cause to be taken photographs, video recordings, or appropriate medical imaging of the adult and his environment as long as such measures are relevant to the investigation and do not conflict with §/n [18.2-386.1](#).

F. Local departments shall foster the development, implementation, and coordination of adult protective services to prevent adult abuse, neglect, and exploitation.

G. Local departments shall not investigate allegations of abuse, neglect, or exploitation of adults incarcerated in state correctional facilities.

H. Local departments shall notify the local law-enforcement agency where the adult resides, or where the alleged abuse, neglect, or exploitation took place, or if these places are unknown, then where the alleged abuse, neglect, or exploitation was discovered, when in receipt of a report describing any of the following:

1. Sexual abuse as defined in § [18.2-67.10](#);
2. Death, serious bodily injury or disease as defined in § [18.2-369](#) that is believed to be the result of abuse or neglect; or
3. Any other criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm.

I. The report and evidence received by the local department and any written findings, evaluations, records, and recommended actions shall be confidential and shall be exempt from disclosure requirements of the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.), except that such information may be

disclosed to persons having a legitimate interest in the matter in accordance with §§ [63.2-102](#) and [63.2-104](#) and pursuant to official interagency agreements or memoranda of understanding between state agencies.

(1974, c. 329, § 63.1-55.1; 1977, c. 547; 1978, c. 749; 1983, c. 604; 1999, c. 749; 2002, c. 747; **2004, cc. 749, 1011.**)

§ 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting.

A. Matters giving reason to suspect the abuse, neglect or exploitation of adults shall be reported immediately upon the reporting person's determination that there is such reason to suspect. Medical facilities inspectors of the Department of Health are exempt from reporting suspected abuse immediately while conducting federal inspection surveys in accordance with § 1864 of Title XVIII and Title XIX of the Social Security Act, as amended, of certified nursing facilities as defined in § [32.1-123](#). Reports shall be made to the local department or the adult protective services hotline in accordance with requirements of this section by the following persons acting in their professional capacity:

1. Any person licensed, certified, or registered by health regulatory boards listed in § [54.1-2503](#), with the exception of persons licensed by the Board of Veterinary Medicine;
2. Any mental health services provider as defined in § [54.1-2400.1](#);
3. Any emergency medical services personnel certified by the Board of Health pursuant to § [32.1-111.5](#);
4. Any guardian or conservator of an adult;
5. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;
6. Any person providing full, intermittent or occasional care to an adult for compensation, including but not limited to, companion, chore, homemaker, and personal care workers; and
7. Any law-enforcement officer.

B. The report shall be made in accordance with subsection A to the local department of the county or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline. Nothing in this section shall be construed to eliminate or supersede any other obligation to report as required by law. If a person required to report under this section receives information regarding abuse, neglect or exploitation while providing professional services in a hospital, nursing

facility or similar institution, then he may, in lieu of reporting, notify the person in charge of the institution or his designee, who shall report such information, in accordance with the institution's policies and procedures for reporting such matters, immediately upon his determination that there is reason to suspect abuse, neglect or exploitation. Any person required to make the report or notification required by this subsection shall do so either orally or in writing and shall disclose all information that is the basis for the suspicion of adult abuse, neglect or exploitation. Upon request, any person required to make the report shall make available to the adult protective services worker and the local department investigating the reported case of adult abuse, neglect or exploitation any information, records or reports which document the basis for the report. All persons required to report suspected adult abuse, neglect or exploitation shall cooperate with the investigating adult protective services worker of a local department and shall make information, records and reports which are relevant to the investigation available to such worker to the extent permitted by state and federal law. Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure.

C. Any financial institution staff who suspects that an adult has been exploited financially may report such suspected exploitation to the local department of the county or city wherein the adult resides or wherein the exploitation is believed to have occurred or to the adult protective services hotline. For purposes of this section, financial institution staff means any employee of a bank, savings institution, credit union, securities firm, accounting firm, or insurance company.

D. Any person other than those specified in subsection A who suspects that an adult is an abused, neglected or exploited adult may report the matter to the local department of the county or city wherein the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline.

E. Any person who makes a report or provides records or information pursuant to subsection A, C or D, or who testifies in any judicial proceeding arising from such report, records or information, or who takes or causes to be taken with the adult's or the adult's legal representative's informed consent photographs, video recordings, or appropriate medical imaging of the adult who is subject of a report shall be immune from any civil or criminal liability on account of such report, records, information, photographs, video recordings, appropriate medical imaging or testimony, unless such person acted in bad faith or with a malicious purpose.

F. An employer of a mandated reporter shall not prohibit a mandated reporter from reporting directly to the local department or to the adult protective services hotline. Employers whose employees are mandated reporters shall notify employees upon hiring of the requirement to report.

G. Any person 14 years of age or older who makes or causes to be made a report of adult abuse, neglect, or exploitation that he knows to be false shall be

guilty of a Class 4 misdemeanor. Any subsequent conviction of this provision shall be a Class 2 misdemeanor.

H. Any person who fails to make a required report or notification pursuant to subsection A shall be subject to a civil penalty of not more than \$500 for the first failure and not less than \$100 nor more than \$1,000 for any subsequent failures. Civil penalties under subdivision A 7 shall be determined by a court of competent jurisdiction, in its discretion. All other civil penalties under this section shall be determined by the Commissioner or his designee. The Board shall establish by regulation a process for imposing and collecting civil penalties, and a process for appeal of the imposition of such penalty pursuant to § [2.2-4026](#) of the Administrative Process Act.

I. Any mandated reporter who has reasonable cause to suspect that an adult died as a result of abuse or neglect shall immediately report such suspicion to the appropriate medical examiner and to the appropriate law-enforcement agency, notwithstanding the existence of a death certificate signed by a licensed physician. The medical examiner and the law-enforcement agency shall receive the report and determine if an investigation is warranted. The medical examiner may order an autopsy. If an autopsy is conducted, the medical examiner shall report the findings to law enforcement, as appropriate, and to the local department or to the adult protective services hotline.

J. No person or entity shall be obligated to report any matter if the person or entity has actual knowledge that the same matter has already been reported to the local department or to the adult protective services hotline.

K. All law-enforcement departments and other state and local departments, agencies, authorities and institutions shall cooperate with each adult protective services worker of a local department in the detection, investigation and prevention of adult abuse, neglect and exploitation.

(1977, c. 547, § 63.1-55.3; 1984, c. 628; 1986, cc. 448, 487; 1990, c. 308; 1991, c. 33; 1994, c. 891; 1997, c. 687; 1999, c. 749; 2001, c. 191; 2002, c. 747; **2004, cc. 749, 1011.**)

§ 63.2-1608. Involuntary adult protective services.

A. If an adult lacks the capacity to consent to receive adult protective services, these services may be ordered by a court on an involuntary basis through an emergency order pursuant to § [63.2-1609](#) or by a guardian or conservator appointed pursuant to Article 1.1 (§ [37.1-134.6](#) et seq.) of Chapter 4 of Title 37.1.

B. In ordering involuntary adult protective services, the court shall authorize only that intervention which it finds to be least restrictive of the adult's liberty and rights, while consistent with his welfare and safety. The basis for such finding shall be stated in the record by the court.

C. The adult shall not be required to pay for involuntary adult protective services, unless such payment is authorized by the court upon a showing that the person is financially able to pay. In such event the court shall provide for reimbursement of the actual costs incurred by the local department in providing adult protective services, excluding administrative costs.

(1977, c. 547, § 63.1-55.5; 1978, c. 562; 1979, c. 451; 1997, c. 801; 2002, c. 747; **2004, cc. 749, 1011.**)

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(1977, c. 547, § 63.1-55.5; 1978, c. 562; 1979, c. 451; 1997, c. 801; 2002, c. 747; **2004, cc. 749, 1011.**)

§ 63.2-1610. Voluntary adult protective services.

A. The local department shall provide or arrange for protective services if the adult requests or affirmatively consents to receive these services. If the adult withdraws or refuses consent, the services shall not be provided.

B. No person shall interfere with the provision of adult protective services to an (i) adult who requests or consents to receive such services, or (ii) for whom consent has been lawfully given. In the event that interference occurs on a continuing basis, the director may petition the court of competent jurisdiction to enjoin such interference.

C. The actual costs incurred by the local department in providing adult protective services shall be borne by the local department, unless the adult or his representative agrees to pay for them or a court orders the local department to receive reasonable reimbursement for the adult protective services, excluding

administrative costs, from the adult's assets after a finding that the adult is financially able to make such payment.

(1977, c. 547, § 63.1-55.7; 2002, c. 747; **2004, cc. 749, 1011.**)

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