

Changes to Protective Order Laws (7/1/11)



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OBJECTIVE for this training:

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Overview of changes in protective order laws that became effective July 1, 2011 (HB 2063/SB 1222).

Protective Orders Impacted

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- **Child Protective Orders:**
 - Child PO §16.1-253
- **Family Abuse Protective Orders:**
 - Emergency Protective Order (EPO)
 - Preliminary Protective Order (PPO)
 - “full” Protective Order (PO)
- **General District Court (GDC) Protective Orders:**
 - Emergency Protective Order (EPO)
 - Preliminary Protective Order (PPO)
 - “full” Protective Order (PO) §19.2-152.10

Why the Changes to the Family Abuse and General District Court (GDC) POs?

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- Provide equal access to Protective Orders for victims of sexual assault, stalking, and dating violence
- Provide equal protections for enforcement for victims of sexual assault, stalking, and dating violence

Changes to Family Abuse Protective Orders

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- Minimal changes
- Revised definition of Family Abuse
- Language changes in the provisions/protections provided

New Definition of Family Abuse

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- Family abuse means “any act involving violence, force, or threat *that* results in bodily injury **or places one in reasonable apprehension of death, sexual assault or bodily injury** and *that* is committed by a person against such person’s family or household member. *Such act includes, but is not limited to, any forceful detention , stalking, criminal sexual assault in violation of Article 7 (§18.2-61 et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault or bodily injury.*”

Changes to Family Abuse EPO, PPO, PO— Provisions

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- Prohibit acts of family abuse “***or criminal offenses that result in injury to person or property.***”
- **PPO prohibits such contacts “*by the respondent with the petitioner or family or household members of the petitioner*” as the court deems “*necessary for the health and safety of such persons.*”

Violations of Family Abuse EPOs, PPOs & POs (§16.1-253.2)

- 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**.

Violations of Family Abuse EPOs, PPOs & POs (cont'd)

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- Any person **convicted of a 2nd offense of violating a protective order**, when the offense is committed **within 5 years of the prior conviction** **and** when **either the instant or prior offense was based on an act or threat of violence**, must serve a **mandatory minimum term of confinement of 60 days**.

Violations of Family Abuse EPOs, PPOs & POs (cont'd)

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- Any person convicted of a **3rd or subsequent offense of violating a protective order**, when the offense is committed **within 20 years of the 1st conviction** and when **either the instant or 1 of the prior offenses was based on an act or threat of violence** is **guilty of a Class 6 felony** and the punishment shall include a **mandatory minimum term of confinement of 6 months**.

Violations of Family Abuse EPOs, PPOs & POs (cont'd)

- 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.

Violations of Family Abuse EPOs, PPOs & POs (cont'd)

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- Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended. **Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § [16.1-279.1](#) for a specified period not exceeding two years from the date of conviction.**

Changes to GDC Protective Orders

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- No more warrant requirement!!
- Prohibited behavior language will be same as that of new definition of family abuse (e.g., no more “serious” bodily injury)

New Definition of Acts of Violence, Force or Threat

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- *“Acts of violence, force, or threat” means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§18.2-61 et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault or bodily injury.*

Changes to GDC POs—Eligibility

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- Removal of warrant requirement
- Deletion of references to specific acts, such as sexual battery, aggravated sexual battery, serious bodily injury, and stalking
- Replaced with references to “act of violence, force, or threat”

Changes to GDC: EPO—Grounds

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LE or Victim asserts that there has been an

- *Act of violence, force, or threat* and on that assertion, the magistrate finds that there is probable danger of a further such *act* being committed by the R against the alleged victim

OR

- A *petition* or warrant for the arrest of the R has been issued *for any criminal offense resulting from the commission of an act of violence, force, or threat.*

Changes to GDC: PPO—Grounds

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- Petition alleging the petitioner is or has been subjected to an act of violence, force, or threat **OR** a petition or warrant for the arrest of the R has been issued for any criminal offense resulting from the commission of an act of violence, force, or threat.
- May be issued ex parte upon good cause shown. Immediate and present danger of any act of violence, force, or threat or evidence sufficient to establish probable cause that an act of violence, force, or threat has recently occurred shall constitute good cause.

Changes to GDC: PO—Grounds

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- A petition, warrant, or conviction for any criminal offense resulting from the commission of an act of violence, force, or threat.
- Hearing held pursuant to subsection D of § [19.2-152.9](#) (PPO Statute)

Changes to GDC EPO, PPOs, PO—Provisions

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- Prohibit ***acts of violence, force, or threat or criminal offenses resulting in injury to person or property,***
- Prohibit such **contacts by the R with the alleged victim or such victim's f/h members** as the judge/magistrate deems necessary to protect the safety of such persons and
- **Such other condition** the judge/magistrate deems necessary to prevent (i) ***acts of violence, force, or threat,*** (ii) **criminal offenses resulting in injury to person or property** or (iii) **communication or contact of any kind by the R.**

Changes to GDC Protective Orders

- Makes consistent misdemeanor and felony penalties for violations of Family Abuse POs (§§16.1-253.1, 16.1-253.4, 16.1-279.1) and violations of General District Court POs (§§19.2-152.8, 19.2-152.9, 19.2-152.10).
- Pro-arrest measures (§19.2-81.3 (C)) of violations of POs (§ 16.1-253.2) or § 18.2-57.2 will be added to violations of General District Court POs.

Changes to GDC Protective Orders

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- LE may request an extension of a General District Court EPO, not to exceed 3 days, for a person in need of protection who is physically or mentally incapable of filing a petition for a preliminary or permanent protective order.
- Must retain misdemeanor General District Court PO violation (§18.2-60.4) records for 20 years.
- Renames "protective orders for stalking" as "protective orders."
- Removes fees for ALL PO petitioners, not just DV, stalking, SV victim petitioners.

Violations of GDC EPOs, PPOs & POs (§18.2-60.4)

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- 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**.

Violations of GDC EPOs, PPOs & POs (cont'd)

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- ***Any person convicted of a 2nd offense of violating a protective order, when the offense is committed within 5 years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, must serve a mandatory minimum term of confinement of 60 days.***

Violations of GDC EPOs, PPOs & POs (cont'd)

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Violations of GDC EPOs, PPOs & POs (cont'd)

- *Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended.*
Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § [19.2-152.10](#) for a specified period not exceeding two years from the date of conviction.

Other 2011 changes: Changes to Firearms Prohibitions under § 18.2-308.1:4 for those subject to Child POs (§16.1-253)

- Currently , § 18.2-308.1:4 prevents a respondent in a Child PO (among other types of POs) from purchasing or transporting a firearm.
- A Child PO respondent MAY purchase or transport a firearm UNLESS he/she is subject to “*a preliminary protective order entered pursuant to subsection F of § 16.1-253 where a petition alleging abuse or neglect has been filed.*”

Other 2011 changes: GPS used in violation of POs or probation conditions

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- Any persons arrested for a felony who have previously been convicted of a felony, may *be subject to monitoring by a GPS (Global Positioning System) tracking device, or other similar device* for the violation of a PO or probation conditions.

Other 2011 changes:
Service of EPOs (§ 16.1-253.4 or §19.2-152.8)

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- LE may *serve a respondent who has an outstanding EPO with a form (to be created by the OES) that contains all of the provisions of the EPO* (Amends § 16.1-264).

RECAP—Family Abuse & GDC PO Changes

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- Removes the criminal warrant requirement for the protective order issued by the General District Court;
- Creates one standard for getting protections for victims of family abuse and for victims of other acts of violence, including sexual assault, stalking, and dating violence.
- Adds enhanced penalties for violation of the protective order issued by the General District Court so that the penalties are the same as those for violating the Family Abuse Protective Order.

RECAP (continued)

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- Requires law enforcement to make an arrest for violation of a protective order issued by the General District Court (“Pro-Arrest” provision). Current law already includes this provision for violation of a Family Abuse Protective Order.
- Changes the name of the “Stalking, Sexual Assault, and Other Acts of Violence Protective Order” issued by the General District Court to “Protective Order.”
- Redefines “family abuse”

Statewide Implementation Challenges

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- Training (judges, clerks, law enforcement, advocates, magistrates, legal aid, victim/witness)
- Revising information/resources available to victims (brochures provided by advocates, law enforcement, AG's Office, etc)
- Changes to law enforcement domestic violence and sexual assault protocols, including procedures around violations
- Revisions to the Protective Order forms and I-CAN system
- Updates to statewide data systems, such as VCIN and VaDATA

Local Implementation Challenges

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- Training (judges, clerks, law enforcement, advocates, magistrates, legal aid, victim/witness)
- Updates to university/college resources and procedures/plans to address dating violence, stalking and sexual assault
- Revision of Domestic Violence CCR and SART agreements to include civil PO for Sexual Assault victims
- Court Processes/Structure
 - Intake and Petition Process
 - Docketing Issues
 - Privacy issues for victims of IPV/Sexual Assault

Contact Information

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