

# Protective Orders

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## Why Do Victims Seek Protective Orders?

Victims of Personal Violence will often try to seek help through various avenues to stop current, and future acts of violence from their batterer. This can be through: friends, family, religious institutions, counseling, ect.

A protective order allows the victim to receive assistance from the court to attempt to prevent any further acts of violence.

## What Can A Protective Order Do For A Victim?

Provide his or her assailant with written legal notice to refrain from further acts that the magistrate or judge has deemed to be a threat to the health and safety of the victim and/or the victim's family.

Provide the victim with temporary custody or visitation of his or her children.

Financial support

Temporary possession of the residence or vehicles.

Other forms of assistance to the victim.

## What Can't A Protective Order Do For The Victim?

A protective order can not guarantee that the assailant will *not commit another crime* against any of the protected parties on the order.

A protective order will also not be able to undo the emotional, physical, and psychological abuse that the victim has been put through.

Note: If the assailant does violate a condition of the order, he or she can be held accountable for their actions by the court.

## Definitions

**Respondent:** The individual who the protective order is being sought against. "Generally there is only one respondent on a protective order".

**Petitioner:** The individual who is seeking to obtain a protective order. There can be more than one protected person on a protective order.

## Current Protective Orders in Virginia

Child (Preliminary §16.1-253 and Final 16.1-277.02 and 16.1-278.3)

Child-Abuse and Neglect (Preliminary §16.1-253 and Final 16.1-278.2)

Family Abuse (Emergency §16.1-253.4, Preliminary §16.1-253.1, and Final §16.1-279)

Protective Order (formerly known as the Stalking/Serious Bodily Injury/Sexual Battery protective order) (Emergency §19.2-152.8, Preliminary §19.2-152.9, and Final §19.2-152.10)\*

Protective Order-In Pending Cases of Divorce, Custody, Support or Visitation §20-103(B)

## Child Protective Orders

### Preliminary and Final Child Protective Orders

Can have more than one respondent on the protective order. Example: Mom and Dad could be named on the same order.

Can only have one protected party. If there are multiple children in need of protection, there will be an order issued for each child.

Are petitioned on behalf of the child by DSS or another party who is not being accused of abuse or neglect of the child.

**Preliminary and Final Child Protective Orders Continued..**

Preliminary Child Protective Orders have three possible expiration dates:

The Adjudicatory Hearing Date

The Dispositional Hearing Date

The Review Date

The Preliminary Child Protective Order can not last more than seventy-five days.

Final Child Protective Orders will expire on the child's eighteenth birthday, unless the order specifically states that the order expires on another date. (Note: A review date on a final child protective order should not be treated the same as a preliminary protective order.)

This image displays two sample forms for Child Protective Orders. The forms are filled with 'SAMPLE' text and contain various fields for case information. Key sections include:

- Child's Name:** Includes fields for First Name, Middle Name, and Last Name.
- Address:** Fields for Street, City, State, and Zip.
- Phone Number:** Fields for Home and Cell phone numbers.
- Case Information:** Fields for Case Number, Date of Report, and Date of Investigation.
- Investigation Summary:** A section with multiple lines of text for describing the case.
- Disposition:** A section with checkboxes for different outcomes.
- Signatures:** Fields for the investigator's name and signature, and the state representative's name and signature.

This image shows a sample form for a Preliminary Child Protective Order. The form includes:

- Child's Information:** Name, address, and phone number.
- Case Details:** Date of report and date of investigation.
- Investigation Summary:** A detailed section for describing the findings of the investigation.
- Order Terms:** A section where the investigator can specify the terms and duration of the preliminary order.
- Signatures and Dates:** Fields for the investigator's signature and the date the order is issued.

This image displays a sample form for a Final Child Protective Order. The form contains:

- Child's Information:** Name, address, and phone number.
- Case Details:** Date of report and date of investigation.
- Investigation Summary:** A detailed section for describing the findings of the investigation.
- Order Terms and Conditions:** A section where the investigator can specify the terms, conditions, and duration of the final order.
- Signatures and Dates:** Fields for the investigator's signature and the date the order is issued.

## Changes Effective July 1, 2011

There are two types of preliminary and final child protective orders.

One will be issued in cases of abuse and neglect, and the other will be issued for all other cases where a petition alleging abuse and neglect has not been filed.

In cases where there is not a petition alleging abuse and neglect, the respondent(s) will be allowed to transport or purchase a firearm under state law. \*Federal law may still disqualify this individual.\*

## Family Abuse Protective Orders

### Family Abuse Protective Order Statistics

From January 1, 2009 to December 31, 2009 there were:

33,807 Emergency Family Abuse Protective Orders Issued

32,729 Preliminary Family Abuse Protective Orders Issued

15,057 Final Family Abuse Protective Orders Issued

### Definition of Family Abuse

"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 (§ 16.2-61 et seq.) of Chapter 4 of Title 16.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. (§ 16.1-226)

## Emergency, Preliminary, and Final Family Abuse Protective Orders

To be eligible for a family abuse protective order the petitioner must be a family or household member of the respondent as defined in §16.1-228.

A warrant against the respondent is **not** required in order for a victim to petition for a family abuse protective order.

## Definition of a Family or Household Member

In Virginia a "family or household member" is defined as:

- (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.

## §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, petition, 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 § 18.2-51.1, (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 5 felony.

C. Whenever a warrant for a violation of this section is issued, the magistrate shall issue an emergency protective order as authorized by § 16.1-263.3, except if the defendant is a minor, an emergency protective order shall not be required.

## §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.

B. A law-enforcement officer having probable cause to believe that a violation of § 18.2-57.2 or 18.2-55.2 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. A law-enforcement officer having probable cause to believe that a violation of § 18.2-57.2 has occurred that involves physical aggression 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 the person to whom the protective order was issued and the person's family and household members; (iii) prior acts of violence, harassment or threat, as defined in § 18.2-55.1.2, by the person against whom the protective order was issued, against the person protected by the order or the protected person's 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.

D. 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 or the person protected by an order issued pursuant to § 18.2-55.2, 18.2-55.3 or 18.2-55.10, both orally and in writing, information regarding the legal and community resources available to the allegedly abused person or person protected by the order. Upon request of the allegedly abused person or person protected by the order, the department shall make a summary of the report available to the allegedly abused person or person protected by the order.

## Virginia Statistics

In 2008 there were 22,986 arrests made for assault and battery against a family or household member.

20% resulted in some type of conviction

58% were either deferred, dismissed, or nolle prossed.

7% were found to be not guilty.

In 2008 there were 1,133 arrests made for assault and battery against a family or household member 3<sup>rd</sup> or subsequent offense.

47% resulted in some type of conviction.

44% were either deferred, dismissed, or nolle prossed.

4% were found to be not guilty.

## Emergency Family Abuse Protective Orders §16.1-253.4

If an arrest is made with out a warrant for an alleged violation of §18.2-57.2 (Assault and Battery Against a Family or Household Member), 18.2-60.4 (Violation of Stalking Protective Order), or 16.1-253.2 (Violation of Family Abuse Protective Order) the officer shall petition the magistrate for an emergency protective order, except if the person arrested is a minor, a petition for an emergency protective order shall not be required.

Regardless if 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, except if the person arrested is a minor, a petition for an emergency protective order shall not be required.

If a warrant is issued for violation of §18.2-57.2 (Assault and Battery Against a Family or Household Member) the magistrate shall issue an emergency protective order, except if the defendant is a minor, an emergency protective order shall not be required.

## Emergency Family Abuse Protective Orders §16.1-253.4 Continued....

Emergency family abuse protective orders are valid for 72 hours or the next available court date and expire at 11:59 pm.

When the emergency protective order is issued, the Judge or Magistrate shall provide the protected person or the law enforcement officer seeking the emergency protective order with the form used to file for a preliminary protective order.

The Judge or Magistrate must also provide written information regarding protective orders that shall include the telephone numbers of domestic violence agencies and legal referral sources.

If the person in need of protection is either physically or mentally incapable of filing a petition pursuant to §16.1-253.1 or §16.1-279, may request the extension of an emergency protective order for an additional period of time not to exceed three days after expiration of the original order.

EMERGENCY PROTECTIVE ORDER - FAMILY ABUSE  
16.1-253.4-1

PETITIONER'S NAME: SAMPLE  
RESPONDENT'S NAME: SAMPLE  
ADDRESS: SAMPLE  
CITY: SAMPLE

CAUTION: Weapon Detected

WARNING: This Order is Not a Warrant

RETURN TO COURT: SAMPLE

Notice of Issuance of Emergency  
Protective Orders

Effective July 1, 2011 (HB 2089):

A law enforcement officer may effect service of an emergency protective order by personally serving the person subject to the order with a notification of the issuance of the order, which shall be on a form approved by the Supreme Court of Virginia. The officer making service shall enter or cause to be entered the date and time of service and other appropriate information into the Virginia Criminal Information Network and make due return to the court.

Preliminary Family Abuse Protective Orders  
§16.1-253.1

Can be issued ex parte.

A full hearing shall be held within fifteen days.

May be extended up to six months if the respondent was not personally served, or if personally served was incarcerated and not transported to the hearing, or good cause shown by the respondent.

Expire at the time of the hearing.

## Final Family Abuse Protective Orders §16.1-279.1

Can be issued for up to two years.

Expire at 11:59 pm on the date of expiration.

Can only be issued after the respondent has had the opportunity to participate in the hearing.

\*Can be extended for up to two years\*

## Preparing Evidence for a Family Abuse Protective Order

Evidence is helpful not only for the criminal aspect of the process (if the victim chooses to file charges), but the civil aspect as well.

These are some crucial elements of evidence that can assist a victim in obtaining a family abuse protective order:

Bring in phone records, emails, text messages, notes, and recordings of the assailant committing the act or acts.

Evidence from the police report.

911 tapes (if available). For criminal charges.

Statements from others who were contacted or present during the crime.

Photographs of any injuries sustained during the assault. (Before and after photos)

Document the date and time of the criminal acts.

## Violation of Family Abuse and Child Protective Orders §16.1-253.2

In addition to any other penalty provided by law, any person who violates any provision of a protective order issued pursuant to §§ 16.1-263, 16.1-263.1, 16.1-253.4, 16.1-278.4, 16.1-279.1, or subsection B of § 16.1-153, 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.

The punishment for any person convicted of a second offense of violating a protective order, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, shall include a mandatory minimum term of confinement of 60 days.

Any person convicted of a third or subsequent offense of violating a protective order, when the offense is committed within 20 years of the first conviction and when either the instant or one 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 six months.



Violation of Family Abuse and Child Protective Orders  
§16.1-253.2 Continued....

*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 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 § 16.1-253.1 for a specified period not exceeding two years from the date of conviction.*

*16.1-279.1 (F) Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such person's due process rights and consistent with federal law.*

Violation of Family Abuse and Child  
Protective Order Statistics

In 2008, there were 3,247 arrests made for violation of Child and Family Abuse protective orders.

33% (1,058) resulted in a conviction.

32% (1,024) were either nolle prossed or dismissed.

4% (121) were found to be not guilty.

1 person was found to be mentally insane.

Protective Orders  
(Formerly Known As The  
Stalking/Serious Bodily Injury/Sexual  
Battery Protective Orders)

Stalking/Serious Bodily Injury/Sexual Battery Protective  
Order Statistics

1,160 Emergency Stalking/Serious Bodily  
Injury/Sexual Battery Protective Orders Issued

565 Preliminary Stalking/Serious Bodily  
Injury/Sexual Battery Protective Orders Issued

394 Final Stalking/Serious Bodily Injury/Sexual  
Battery Protective Orders Issued

## Emergency, Preliminary, and Final Protective Orders

To be eligible for a protective order you must meet the following:

Be an alleged victim of one or more of the following crimes:

"Act 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 (§ 18-2-5) 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.

You **DO NOT** have to be a family or household member to be eligible for this protective order.

There must be a probable danger of a further such offense being committed by the respondent against the alleged victim.

You **DO NOT** have to obtain a warrant in order to petition for the protective order.

## Legislation Effective July 1, 2011

The stalking/serious bodily injury/sexual battery protective order is renamed to protective order.

A victim is no longer required to obtain a criminal warrant prior to petitioning for the protective order.

Defines "act of violence, force, or threat". This will allow for the protective order to include more types of behaviors.

## Stalking

## National Statistics

According to the Bureau of Justice Statistics, during a 12 month period in 2006 an estimated 3.4 million people over the age of 18 were victims of stalking in the United States.

46 percent of victims said they received at least one unwanted contact per week.

Male (37%) and Female (41%) stalking victimizations were equally likely to be reported to the police.

3 in 4 stalking victims knew their offender.

1 in 4 victims reported some form of cyber stalking.

## Virginia Statistics

In 2008 there were 913 arrests made for stalking (first offense).

Only 18% of those arrests resulted in a conviction.

71% of those cases were either dismissed, nolle prossed, or were found not guilty.

In 2008 there were 19 arrests made for stalking 3<sup>rd</sup> or subsequent offense within five years of the original offense.

Only 32% of those arrests resulted in a conviction.

42% of those cases were either dismissed or nolle prossed.

## Stalking

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.

## Identifying Patterns of Stalking

Excessive phone calls from the alleged assailant to the victim, when the victim has requested the individual to stop calling.

Making ominous threats towards the victim.

Destruction of personal property.

Following the victim to: home, work, school, friends homes, places of business, etc.

Cyber Stalking via social networking: My Space, Facebook, Twitter, etc.

Making unwanted contacts to friends and family members of the victim.

Tracking any calls, emails, texts, and other forms of communication between the victim and his or her friends or family.

Randomly appearing places where the victim is located.

"Spoofing"

## Sexual Battery and Aggravated Sexual Battery

## National Statistics

According to the Bureau of Justice Statistics, in 2008 individuals twelve or older experienced an estimated 222,000 rapes or sexual assaults.

## Virginia Statistics

In 2009 there were 4,779 reported forcible sex offenses in Virginia.

86% (4099) of the victims were female.

91% (4327) of the offenders were males.

72% of the victims knew their offender in some capacity.

## §18.2-67.4 Sexual Battery

A. An accused is guilty of sexual battery if he **sexually abuses, as defined in §18.2-67.10, (i) the complaining witness against the will of the complaining witness, by force, threat, intimidation, or ruse**, (ii) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail, and the accused is an employee or contractual employee of, or a volunteer with, the state or local correctional facility or regional jail; is in a position of authority over the inmate, and knows that the inmate is under the jurisdiction of the state or local correctional facility or regional jail, or (iii) a probationer, parolee, or a pretrial defendant or post trial offender under the jurisdiction of the Department of Corrections, a local community-based probation services agency, a pretrial services agency, a local or regional jail for the purposes of imprisonment, a work program or any other pretrial/probationary or pretrial services of agency and the accused is an employee or contractual employee of, or a volunteer with, the Department of Corrections, a local community-based probation services agency, a pretrial services agency or a local or regional jail, is in a position of authority over an offender, and knows that the offender is under the jurisdiction of the Department of Corrections, a local community-based probation services agency, a pretrial services agency or a local or regional jail.

B. **Sexual battery is a Class 1 misdemeanor.**

## §18.2-67.3 Aggravated Sexual Battery

- A. An accused shall be guilty of aggravated sexual battery if he or she **sexually abuses** the complaining witness, and
  1. The complaining witness is less than 13 years of age, or
  2. The act is accomplished through the use of the complaining witness's **mental incapacity** or **physical helplessness**, or
  3. The offense is committed by a parent, step-parent, grandparent, or step-grandparent and the complaining witness is at least 13 but less than 18 years of age, or
  4. The act is accomplished against the will of the complaining witness by force, threat or intimidation, and
    - a. The complaining witness is at least 13 but less than 15 years of age, or
    - b. The accused causes serious bodily or mental injury to the complaining witness, or
    - c. The accused uses or threatens to use a dangerous weapon.
- B. **Aggravated sexual battery is a felony punishable by confinement in a state correctional facility for a term of not less than one nor more than 20 years and by a fine of not more than \$100,000.**

## §18.2-67.10 Definitions

"Complaining witness" means the person alleged to have been subjected to rape, forcible sodomy, inanimate or animate object sexual penetration, marital sexual assault, aggravated sexual battery, or sexual battery.

"Sexual abuse" means an act committed with the intent to sexually molest, arouse, or gratify any person, where:

- a. The accused intentionally touches the complaining witness's intimate parts or material directly covering such intimate parts;
- b. The accused forces the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts;
- c. If the complaining witness is under the age of 13, the accused causes or assists the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts; or
- d. The accused forces another person to touch the complaining witness's intimate parts or material directly covering such intimate parts.

## §18.2-67.10 Definitions Continued..

"Mental incapacity" means that condition of the complaining witness existing at the time of an offense under this article which prevents the complaining witness from understanding the nature or consequences of the sexual act involved in such offense and about which the accused knew or should have known.

"Physical helplessness" means unconsciousness or any other condition existing at the time of an offense under this article which otherwise rendered the complaining witness physically unable to communicate an unwillingness to act and about which the accused knew or should have known.

## Preparing Evidence for a Protective Order

Evidence is helpful not only for the criminal aspect of the process, but the civil aspect as well.

Bring in phone records, emails, text messages, notes, and recordings of the assailant committing the act or acts.

Evidence from the police report.

911 tapes (if available).

Statements from others who were contacted or present during the crime.

Photographs of the individual committing the acts ("Stalking").

Photographs of any injuries sustained during the assault. (Before and after photos)

## Preparing Evidence for a Protective Order Continued....

Document the date and time of the criminal acts.

If the individual is a victim of a sexual assault make sure that they have been examined by a Forensic Nurse Examiner (FNE), or Sexual Assault Nurse Examiner (SANE) "within 72 hours of the incident"

The FNE's or SANE's findings can be helpful in determining how seriously injured the victim is/was.

## Emergency Protective Order §19.2-152.8

Issued by a Magistrate or Judge.

Do not have to obtain a warrant prior to seeking the protective order.

Is valid for 72 hours or the next available court date, and expires at 11:59 pm.

The Judge or Magistrate can impose the following conditions on the respondent:

1. Prohibiting acts of violence, force, or threat or criminal offenses resulting in injury to person or property;
2. Prohibiting such contacts by the respondent with the alleged victim 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 (i) acts of violence, force, or threat, (ii) criminal offenses resulting in injury to person or property, or (iii) communication or other contact of any kind by the respondent.

EMERGENCY PROTECTIVE ORDER  
Commonwealth of Virginia - VA CODE § 19.2-152.8

**DEFENDANT:** [Redacted]  
**PLAINTIFF:** [Redacted]

**ISSUANCE BY:** [Redacted] (Magistrate/Judge)  
**DATE:** [Redacted]

**SECTION 1: PURPOSE - Weapons Prohibited**  
The Respondent is prohibited from possessing any firearm, handgun, rifle, shotgun, or other dangerous weapon, or any other dangerous object, on any premises controlled by the Respondent, on any premises controlled by the Plaintiff, or on any premises controlled by any family or household member of the Respondent.

**SECTION 2: PROHIBITED ACTS**  
The Respondent is prohibited from:  
1. Committing any act of violence, force, or threat against the Plaintiff, any family or household member of the Plaintiff, or any other person named in this order.  
2. Communicating with, or attempting to communicate with, the Plaintiff, any family or household member of the Plaintiff, or any other person named in this order by any means, including in person, by telephone, by text message, by email, or by social media.  
3. Possessing any firearm, handgun, rifle, shotgun, or other dangerous weapon, or any other dangerous object, on any premises controlled by the Respondent, on any premises controlled by the Plaintiff, or on any premises controlled by any family or household member of the Respondent.

**SECTION 3: OTHER CONDITIONS**  
The Respondent is prohibited from:  
1. Possessing any firearm, handgun, rifle, shotgun, or other dangerous weapon, or any other dangerous object, on any premises controlled by the Respondent, on any premises controlled by the Plaintiff, or on any premises controlled by any family or household member of the Respondent.  
2. Committing any act of violence, force, or threat against the Plaintiff, any family or household member of the Plaintiff, or any other person named in this order.  
3. Communicating with, or attempting to communicate with, the Plaintiff, any family or household member of the Plaintiff, or any other person named in this order by any means, including in person, by telephone, by text message, by email, or by social media.

**SECTION 4: EXPIRATION**  
This order shall expire on [Redacted] at 11:59 PM.

## Preliminary Protective Order §19.2-152.9

Issued by a Judge (JDR and GD)

A full hearing shall be held within fifteen days.

May be extended up to six months if the respondent was not personally served, or if personally served was incarcerated and not transported to the hearing, or good cause shown by the respondent.

Expire at the time of the hearing.

1. Prohibiting acts of violence, force, or threat or criminal offenses resulting in injury to person or property;
2. Prohibiting such contacts by the respondent with the alleged victim 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 (i) acts of violence, force, or threat, (ii) criminal offenses resulting in injury to person or property, or (iii) communication or other contact of any kind by the respondent.

PRELIMINARY PROTECTIVE ORDER  
Commonwealth of Virginia - VA CODE § 19.2-152.9

**DEFENDANT:** [Redacted]  
**PLAINTIFF:** [Redacted]

**ISSUANCE BY:** [Redacted] (Judge)  
**DATE:** [Redacted]

**SECTION 1: PURPOSE - Weapons Prohibited**  
The Respondent is prohibited from possessing any firearm, handgun, rifle, shotgun, or other dangerous weapon, or any other dangerous object, on any premises controlled by the Respondent, on any premises controlled by the Plaintiff, or on any premises controlled by any family or household member of the Respondent.

**SECTION 2: PROHIBITED ACTS**  
The Respondent is prohibited from:  
1. Committing any act of violence, force, or threat against the Plaintiff, any family or household member of the Plaintiff, or any other person named in this order.  
2. Communicating with, or attempting to communicate with, the Plaintiff, any family or household member of the Plaintiff, or any other person named in this order by any means, including in person, by telephone, by text message, by email, or by social media.  
3. Possessing any firearm, handgun, rifle, shotgun, or other dangerous weapon, or any other dangerous object, on any premises controlled by the Respondent, on any premises controlled by the Plaintiff, or on any premises controlled by any family or household member of the Respondent.

**SECTION 3: OTHER CONDITIONS**  
The Respondent is prohibited from:  
1. Possessing any firearm, handgun, rifle, shotgun, or other dangerous weapon, or any other dangerous object, on any premises controlled by the Respondent, on any premises controlled by the Plaintiff, or on any premises controlled by any family or household member of the Respondent.  
2. Committing any act of violence, force, or threat against the Plaintiff, any family or household member of the Plaintiff, or any other person named in this order.  
3. Communicating with, or attempting to communicate with, the Plaintiff, any family or household member of the Plaintiff, or any other person named in this order by any means, including in person, by telephone, by text message, by email, or by social media.

**SECTION 4: EXPIRATION**  
This order shall expire on [Redacted] at 11:59 PM.

## Final Protective Order §19.2-152.10

Issued by a Judge (JDR and GD)

The Judge or Magistrate can impose the following conditions on the respondent:

1. Prohibiting acts of violence, force, or threat or criminal offenses resulting in injury to person or property;
2. Prohibiting such contacts by the respondent with the alleged victim 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 (i) acts of violence, force, or threat, (ii) criminal offenses resulting in injury to person or property, or (iii) communication or other contact of any kind by the respondent.

Valid for up to two years.

Expires at 11:59 pm on the date of expiration.

Can be extended for an additional two years.

PROTECTIVE ORDER

Case No. \_\_\_\_\_

1. Domestic Violence Case    2. Family Violence Case    3. Protective Order for a Respondent Protective Order

4. Threats and Harassment, Stalking, Sexual Battery

1. Alleged Offense(s)    2. Plaintiff's Description    3. If Plaintiff is a Respondent Protective Order

Plaintiff: \_\_\_\_\_

Respondent: \_\_\_\_\_

Other parties (family or household members): \_\_\_\_\_

1. (C)ACTIONS: Waiver Granted

19.2-152.10 (F) Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such person's due process rights and consistent with federal law.

PROTECTIVE ORDER: REMAIN IN FULL FORCE AND EFFECT UNTIL \_\_\_\_\_

FILED \_\_\_\_\_

BY: \_\_\_\_\_

## Violation of Protective Orders §18.2-60.4

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. The punishment for any person convicted of a second offense of violating a protective order, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, shall include a mandatory minimum term of confinement of 60 days. Any person convicted of a third or subsequent offense of violating a protective order, when the offense is committed within 20 years of the first conviction and when either the instant or one 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 six months.

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 forcibly 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 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 if 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.

§ 19.2-152.10 (F). Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such person's due process rights and consistent with federal law.

## Violation of Stalking/Serious Bodily Injury/Sexual Battery Protective Order Statistics

In 2008, there were 86 arrests made for violation of a stalking/serious bodily injury/sexual batter protective order.

45% (39) resulted in a conviction.

22% (19) were either nolle prossed or dismissed.

5% (4) were found to be not guilty.

The Virginia Protective Order Registry, The National Crime Information Center's Protective Order File, and Full Faith and Credit

### Virginia Protective Order Registry

is an electronic data base that contains all active protective orders issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.6, 19.2-152.9, or § 19.2-167.10 (d) an order issued pursuant to subsection B of § 19.2-167 (a) an order entered pursuant to subsection D of § 19.2-167.

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 forthwith forward an attested copy of the order to the primary law-enforcement agency responsible for service and entry of protective orders which shall, upon receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2, (§ 52-14 et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network.

**FILED OF FOREIGN PROTECTIVE ORDER** **SAMPLE**

Number of Party Filing Foreign Protective Order: \_\_\_\_\_

Virginia Address of Party Filing Order: \_\_\_\_\_

Number of Persons Protected by the Order: **SAMPLE**

Number of Protective Orders Issued: \_\_\_\_\_

Issuing Jurisdiction: \_\_\_\_\_

Number of Cases which require Entry: \_\_\_\_\_

Date of Entry: \_\_\_\_\_

Signature/Date of Entry: \_\_\_\_\_

Individual/Responsible if Issuance of P.O. denied: \_\_\_\_\_

Full Name: **SAMPLE**

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

**CLERK'S CERTIFICATE**

No. entered or checked for entry of the above identified foreign protective order for each State and the Court:

**SAMPLE**

### What If The Agency or Court Can Not Verify The Order?

While these situations should be rare Virginia law permits the following:

"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." (§ 16.1-279.1 and § 19.2-152.10)



### What If There Is More Than One Active Protective Order On File?

Protective orders can be appealed to the Circuit Court. If the protective order is appealed to a Circuit Court, and the order is modified. The Circuit Court order would replace the order from the GD or JDR court that was appealed.

Amended protective orders replace the previously issued order, and are enforceable once served on the respondent.

Protective orders issued upon conviction of violating a previously issued protective order do not replace the previous order, unless the court issues an order of dissolution for the original order.

## Protective Orders and Firearms

## Statistics

In 2008, offenders used guns in 67% of the nations murders, 44% of robberies, and 21% of aggravated assaults.

In 2009, the Virginia State Police Firearms Transaction Center (FTC) denied 130 gun applicants the right to purchase a firearm, due to being subject to an active protective order.

The FTC also denied 466 applicants the right to purchase a firearm, due to being convicted of a misdemeanor crime of domestic violence.

## Protective Orders and Firearms

Virginia law prevents an individual who is subject to a Protective Order from **purchasing or transporting** a firearm. §18.2-308.1.4

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 §18.2-308.1.4

Federal law prohibits an individual from **purchasing, transporting, or possessing** any **firearm or ammunition** who is subject to an order that:

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)  includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(D) by its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury 18 U.S.C. § 922(g)(6)

Federal law also prohibits any individual who is convicted of a misdemeanor crime of domestic violence from purchasing, transporting, or possessing any firearm or ammunition. 18 U.S.C. § 922(g)(9)

Questions????