

Protective Order Legislation (2011): Including 2012 and 2013 updates



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Presented on May 8, 2013, through the Young Lawyers
Conference of the Virginia State Bar.

OBJECTIVE for this training:

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Overview of major changes to protective order laws that became effective July 1, 2011 (HB 2063/SB 1222), minimal changes that took place in July 1, 2012, and recent legislative updates I expect to take place on July 1, 2013

Protective Orders Impacted

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- **Child Protective Orders:**
 - Child PO §16.1-253
- **Family Abuse Protective Orders:**
 - Emergency Protective Order (EPO) §16.1-253.4
 - Preliminary Protective Order (PPO) §16.1-253.1
 - “full” Protective Order (PO) §16.1-279.1
- **General District Court (GDC) Protective Orders:**
 - Emergency Protective Order (EPO) §19.2-152.8
 - Preliminary Protective Order (PPO) §19.2-152.9
 - “full” Protective Order (PO) §19.2-152.10

RECAP of Major Changes—2011 Family Abuse & GDC

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- **Removes the criminal warrant requirement** for the protective order issued by the General District Court.
- **Creates one standard for obtaining protections** from acts of violence, including sexual assault, stalking, and dating violence, whether or not the victim has a family or household member relationship with the abuser.
- **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).** Before these 2011 changes, the law only required this for violations 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.”**

Why the 2011 Changes to the Family Abuse and General District Court (GDC) POs?

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

2011 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 (2011) 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 (§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.*”

2011 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.*”

2011 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 (2011) 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.*

2011 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”

2011 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.*

2011 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.

2011 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)

2011 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.**

2011 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 were added to violations of General District Court POs.

2012: Clarifies which Violations of POs are “pro-arrest” violations—SB 300 (cont’d)

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ONLY the following violations of a PO provision pursuant to § § 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.14, 16.1-279.1 or § 20-103(B) are “pro-arrest” provisions (if Respondent is convicted of these = Class 1 misdemeanor):

- prohibition from “going or remaining upon land, buildings, or premises,”
- “further acts of family abuse,”
- “committing a criminal offense,”
- “prohibits contacts between by the respondent and with the respondent's allegedly abused person or family or household member members.”

2012: Clarifies which Violations of POs are “pro-arrest” violations—SB 300 (cont’d)

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In other words, the above are “pro-arrest” violations or violations for which law enforcement may immediately arrest the respondent. Other violations are considered civil violations for which the petitioner would have to file a motion for a show cause hearing.

2011 “Pro-Arrest” provisions and determining predominant aggressor



C. A law-enforcement officer having probable cause to believe that a violation of § [18.2-60.4](#) 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, force, or threat, as defined in § [19.2-152.7:1](#), 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.

2011 Changes to GDC Protective Orders

- 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**.

2011 Violations of GDC EPOs, PPOs & POs (cont'd)

- ***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.***

2011 Violations of GDC EPOs, PPOs & POs (cont'd)

- *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**.*

2011 Violations of GDC 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.*

2011 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:
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).

2012: Align Procedures for Protective Orders in JDR, GD & Circuit Courts—SB 445/HB 1033

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Before this bill passed, there was some uncertainty about whether Circuit Courts could modify, extend or dissolve POs that they themselves issued (or if only Juvenile and Domestic Relations District (JDR) and General District Courts (GDC) could do so):

- As of 7/1/12, Circuit Courts may indeed modify, dissolve or extend POs that they themselves issue.

2012: Align Procedures for Protective Orders in JDR, GD & Circuit Courts—SB 445/HB 1033 (cont'd)

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- Circuit Courts must enter and transfer identifying information from POs (i.e., Respondent's name, date of birth, gender, race) electronically into the Virginia Criminal Information Network (VCIN) with the same speed as that required by JDR and GDC Courts (“forthwith, but in all cases no later than the end of the business day on which the order was issued”).
- Beginning on 7/1/13, any circuit court that does not use the Statewide Case Management System (CMS) shall provide protective orders directly to VCIN in an electronic format approved by the Department of State Police. Between 7/1/12 and 7/1/13 July 1, 2013, these Circuit Courts (that cannot access the CMS) shall forthwith forward the PO to the primary law-enforcement agency responsible for its service and entry into VCIN.

2012: JDR has jurisdiction over POs in which Minor is Petitioner or Respondent—SB 300

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JDR Court hears all petitions filed to obtain a PO pursuant to § § 16.1-253.1, 16.1-253.4, or 16.1-279.1, and all petitions filed for the purpose of obtaining an order of protection pursuant to § § 19.2-152.8, 19.2-152.9, or 19.2-152.10 if either the alleged victim or the respondent is a juvenile.

2012: JDR Intake must accept petition to obtain PO pursuant to § § 19.2-152.8, 19.2-152.9, or 19.2-152.10 in which Minor is Petitioner or Respondent—SB 300 (cont'd)

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- The intake officer shall accept and file a petition in which it is alleged that an act of violence, force, or threat has occurred, a protective order is being sought pursuant to § § 19.2-152.8, 19.2-152.9 or 19.2-152.10 and either the alleged victim or the respondent is a juvenile.
- If the minor petitioner is seeking a PO pursuant to § § 19.2-152.8, 19.2-152.9 or 19.2-152.10, the intake officer shall provide a written explanation of the conditions, procedures and time limits applicable to the issuance of POs pursuant to § § 19.2-152.8, 19.2-152.9, or 19.2-152.10.

2012: Clarifies whom Respondent must refrain from contacting—SB 300 (cont'd)

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Judge may only prohibit contact by the respondent against the allegedly abused person or family or household members of the allegedly abused person:

- Clarifies that the judge may only prohibit contact by Respondent with Petitioner or her Family or Household Members...NOT by Respondent with his OWN Family or Household Members (!)
- Makes consistent contact prohibition language of “by the respondent against” instead of “between the Respondent and the Petitioner...”*

New (2012) GDC PO Venue Provision—SB 300 (cont'd)

§ 19.2-152.11. PO petition may be brought where

1. Either party has his/her principal residence
2. the act of violence, force or threat by the respondent against the petitioner occurred or
3. a PO 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.

7/1/2013: Protective Orders: Exempt from Stay Pending Appeal – SB1016/HB1643



- The bill clarifies that a protective order entered under **§ 16.1-253.2 or § 18.2-60.4** (violation of a Family Abuse or Non-Family Abuse PO), shall remain in effect upon the pendency of an appeal, unless the order is suspended by the court.

7/1/2013: Increased Penalties for Unauthorized Electronic Tracking Devices – HB1981



- Any person who installs an electronic tracking device through intentionally deceptive means and without consent is guilty of a Class 3 misdemeanor.
- **EXCEPTIONS:**
 - Law enforcement, judicial officers, probation or parole officers, employees of Dept. of Corrections when they are engaged in lawful performance of official duties.
 - Parents or legal guardians tracking minors or those for whom they are designated as legal guardians.

7/1/2013: Increased Penalties for Unauthorized Electronic Tracking Devices – HB1981 (cont.)



- Representatives for incapacities adults.
- Owners of fleet vehicles.
- Electronic communications providers when they make full disclosures.
- Private investigators defined under § 9.1-138 who are acting in the normal course of business and have consent of the owner.

HOWEVER, the exception does not apply if the private investigator knows the client is subject to a protective order under under § [16.1-253](#) (Child Protective Orders), § [16.1-253.1](#) (Preliminary Protective Order – Family Abuse), § [16.1-253.4](#) (Emergency Protective Order-Family Abuse), § [16.1-279.1](#) (2 Year Protective Order – Family Abuse), § [19.2-152.8](#) (Emergency Protective Order – Non-Family Abuse), § [19.2-152.9](#) (Preliminary Protective Order – Non-Family Abuse), § [19.2-152.10](#) (2 year Protective Order – Non-Family Abuse) or § [20-103](#) (B) (15 day protective order during a divorce proceeding).

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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