



Protective Orders

December 8, 2010

Policy Considerations



- Issue 1:
Endorse or reject increasing the scope of stalking protective orders so that anybody who has a legitimate fear of future violence can obtain one.
- *IF YES, Should dating relationship protective orders be created? IF NO, Issue 2 is bypassed.*
 - Related Issue: Endorse or reject eliminating the warrant requirement for stalking protective orders.

Policy Considerations



- Issue 2:
Endorse or reject adding a definition of dating relationships to protective orders (SB 208).
- *IF YES:*
 - Alternative 1: Cases heard in JDR Court; OR
 - Alternative 2: Cases heard in General District Court.
 - IF Alternative 1 is chosen, Do concurrent criminal charges resulting from violating protective order get heard in JDR Court; OR, General District Court?
 - IF YES, Should “family abuse protective orders” be changed to “domestic violence orders?”

Policy Considerations



- Issue 3:
Endorse or reject a pre-approved notice form to be deemed service of process of a protective order on a respondent (HB 453).

Policy Considerations



Issue 4:

- Alternative 1: Endorse or reject allowing a judge to require a respondent of a protective order to wear a GPS tracking device (HB 164/656); OR,
- Alternative 2: Only allow a judge to order a respondent to wear a GPS device upon heightened showing of danger to the victim, such as:
 - Possibility 1: Respondent has previous criminal convictions for violence;
 - Possibility 2: Respondent has previous conviction for violation of a protective order;
 - Possibility 3: In current case, reason for protective order is respondent caused severe bodily injury to victim;
 - Possibility 4: Victim is able to present evidence demonstrating a heightened threat of violence from the respondent.

Policy Considerations



- Issue 5:

Endorse or reject for a judge to be able to order a respondent to wear a GPS device in the context of a pre-trial condition of bond.

- Possibility 1: Any violation of protective order;
OR,
- Possibility 2: Only for committing an act of violence against the victim.

Policy Considerations



- Issue 6:

Endorse or reject for a judge to be able to order a respondent to wear a GPS device in the context of probation for violation of a protective order.

- Possibility 1: Any violation of protective order;
OR,
- Possibility 2: Only for committing an act of violence against the victim.

Policy Considerations



- Issue 7:
Endorse or reject the ability of a minor to petition a court for a protective order without the consent of a parent (HB 1156).

Policy Considerations



- Issue 8:
Endorse or reject making the respondent of a family abuse protective order who later assaults the victim guilty of domestic assault (HB 216).

Policy Considerations



- Issue 9:
Endorse or reject allowing a judge to include companion animals and other personal property as specific requirements in a protective order (HB 285 with modification).

Policy Considerations



- Issue 10:
Endorse or reject making penalties for violations of stalking protective orders identical to penalties for violations of family abuse protective orders.
- Issue 11:
Endorse or reject allowing law enforcement the ability to request an extension of a stalking emergency protective order if the victim is incapacitated as they can with family abuse protective orders.

Policy Considerations



- Issue 12:

Endorse or reject whether the issuance of a protective order should not be automatic upon a conviction of stalking, but only at the request of the victim.

- Related Issue: Should the order to refrain from contact with the victim upon a conviction for stalking be clearly identified as a stalking protective order?

Policy Considerations



- Issue 13:
Endorse or reject renaming stalking protective orders as restraining orders.

Policy Considerations



- Issue 14:
Endorse or reject prohibiting judges from ordering generic “no contact” orders in criminal cases upon a conviction for domestic assault -- they either issue a formal protective order, or do not forbid contact between the parties.
- *IF YES*, there are two options:
 - A judge can issue a family abuse protective order on his own initiative, even if victim does not request;
OR,
 - A judge may issue only upon request of victim.

Policy Considerations



- Issue 15:
Endorse or reject expanding the criteria for obtaining a protective order to include severe emotional distress or psychological trauma.
- *IF YES*, which type of order?
 - Only family abuse protective orders; OR,
 - Only stalking protective orders; OR,
 - Both types of protective orders.

Policy Considerations



- Issue 16:
Endorse or reject prohibiting law enforcement from obtaining an emergency family abuse protective order unless a criminal warrant is also issued.

Policy Considerations



- Issue 17:

Endorse or reject limiting family abuse protective orders strictly to 72 hours, with no extensions “until court is next in session,” unless the victim—and not law enforcement—requests an additional 72 hour extension.

- Issue 18:

Endorse or reject language that clarifies that when a new protective order is issued upon a conviction for violating a protective order, the new protective order supersedes the former protective order.

Policy Considerations



- Issue 19:

Endorse or reject making the imposition of a child abuse protective order under Va. Code § 16.1-253, if done for reasons unrelated to child abuse, have no effect on a person's firearms rights.

Policy Considerations



- Issue 20:

Endorse or reject rewriting all of the protective order statutes in Title 16.1, placing them in their own, newly created Article, with new Code section numbers.



Discussion