

# **AGENDA**

**1:00 P.M. TO 2:30 P.M.**

**ISSUES OF DOMESTIC VIOLENCE IN THE  
VIRGINIA COURT SYSTEM:**

**GETTING INTO THE COURT SYSTEM AND HOW  
THEY'RE HANDLED**

**2:30 P.M. TO 3:00 P.M.**

**QUESTIONS AND ANSWERS**

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## ISSUES OF DOMESTIC VIOLENCE IN THE VIRGINIA COURT SYSTEM

- I. How issues of Domestic Violence are brought to the Court's attention.
  - a. Criminal (Assault and Battery, Strangulation, Malicious Wounding, etc.)
    - i. Warrant issued by law enforcement
    - ii. Petition issued by Intake if the Defendant is a Juvenile
    - iii. Victim goes directly to Magistrate
  - b. Civil
    - i. Emergency Protective Order – Issued by a Court or Magistrate on a Petition. (Va. Code § 16.1-253.4) Note: When a warrant for assault and battery is issued, a presumption exists that further abuse will occur, requiring the issuance of an EPO.
      1. Family Abuse in JDR Court (Va. Code § 16.1-253.1)
      2. General Protective Orders (no family relationship) (Va. Code § 19.2-152.9)
        - a. In GDC if both Petitioner and Respondent are adults
        - b. In JDR if either Petitioner or Respondent is a juvenile. Filed by Next friend if Petitioner a Juvenile. If Respondent is a Juvenile, Court will appoint a GAL
    - ii. Preliminary Protective Order
      1. Typically issued *ex parte*.
      2. Valid for up to 15 days

3. May be extended up to 6 months in the event the Preliminary Protective Order is not served on the Respondent.
4. May be extended at the request of the Respondent upon good cause shown, or in the event the Respondent is incarcerated and not transported to the hearing.

iii. Protective Order – Family Abuse

1. 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. See Va. Code § 16.1-228
2. May be issued for any period up to 2 years.
3. Subject to review at any time upon Motion by either party.

iv. General Protective Order – No family relationship

1. A Protective Order may be issued "Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable period of time, subjected to an act of violence, force, or threat, or (ii) a petition or warrant has been issued for the arrest of the alleged perpetrator for any criminal offense resulting from the commission of an act of violence, force, or threat, 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.” See Va. Code § 19.2-152.9

2. May be issued *ex parte*.

3. May be issued for any period up to 2 years.

v. Protective Orders may be extended beyond the 2 year period upon Motion filed by the Petitioner **PRIOR TO** the existing Protective Order terminating. See Va. Code § 16.1-279.1 or §19.2-152.10

1. Given Precedence on the Docket

2. May be granted up to an additional 2 years

3. Requires evidence that the Respondent continues to pose a threat to the Petitioner or their family members.

4. No limit on the number of extensions that can be granted

c. Trial Issues

i. Criminal

1. Misdemeanor vs. Felony

2. Burden of Proof – Beyond a Reasonable Doubt

3. Possible Outcomes/Services available

a. Limit or place conditions on contact with victim

b. Classes – Anger Management or Batterer’s Intervention

c. Substance Abuse Treatment

ii. Civil

1. Burden of Proof – Preponderance of the Evidence

2. Remedies available at the Preliminary Protective Order vs. the Permanent Protective Order

A preliminary protective order issued pursuant to 19.2-152.9 (General Protective Order) may include any one or more of the following conditions to be imposed on the respondent:

1. Prohibiting acts of violence, force, or threat or criminal offenses that may result in injury to person or property;
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;
3. Such other conditions as the court deems necessary to prevent (i) acts of violence, force, or threat, (ii) criminal offenses that may result in injury to person or property, or (iii) communication or other contact of any kind by the respondent; and
4. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such petitioner meets the definition of owner in § 3.2-6500.

A preliminary protective order issued pursuant to 16.1-253.1 (Family Abuse 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 or criminal offenses that result in injury to person or property.
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 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.

4. Enjoining the respondent from terminating any necessary utility service to a premises that the petitioner has been granted possession of pursuant to subdivision 3 or, where appropriate, ordering the respondent to restore utility services to such premises.

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 and, where appropriate, requiring the respondent to pay deposits to connect or restore necessary utility services in the alternative housing provided.

7. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such petitioner meets the definition of owner in § 3.2-6500.

8. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner.

If a permanent protective order is issued pursuant to 16.1-279.1, 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.

II. Effect of Criminal Convictions or Protective Orders on Concealed Weapons Permits - If a Protective Order is issued, the Respondent must surrender any concealed weapons permit immediately for the duration of the time the Protective Order is in place.

CHAPTER 8 - PROTECTIVE ORDERS

I. FAMILY ABUSE AND CRIMINAL CASES

A. Emergency Protective Orders

An emergency protective order under this section may be requested in person by a petitioner or a law enforcement officer or by telephone by a law enforcement officer of any circuit, general district or juvenile and domestic relations district court judge or by a magistrate. Va. Code § 16.1-253.4. An officer requesting an order by telephone writes the request on the form, reads it to the judge, and writes the judge's response in the order portion of the form.

An emergency protective order under this section, if granted, provides protection to "family and household members" by prohibiting acts of family abuse, prohibiting such contacts by respondent with family or household members as the judge or the magistrate deems necessary to protect the safety of such person and/or granting the family or household member possession of the premises occupied by the parties to the exclusion of the respondent. A grant of possession does not affect title to any real or person property.

Under Va. Code § 16.1-253.4, when a warrant for domestic assault is issued, there exists a presumption that further family abuse will occur, therefore, requiring the issuance of an Emergency Protective Order, unless rebutted by the victim.

Virginia Code § 16.1-264 provides that a law-enforcement officer may effect service of an emergency protective order by personally serving the respondent with a notification of the issuance of the order. The notice, district court form DC-633, NOTICE OF ISSUANCE OF EMERGENCY PROTECTIVE ORDER-FAMILY ABUSE, must contain the necessary information and the requirements of the emergency protective order. The officer making service shall enter or cause to be entered the information into the Virginia Criminal Information Network (VCIN) and make due return to the court.

B. Emergency Protective Order – Family Abuse Procedures

**Step 1 Magistrate issued EPO:**

The Clerk receives district court form DC-626, EMERGENCY PROTECTIVE ORDER-FAMILY ABUSE

The case is indexed in JCMS using the following codes:

Case type: PE-Emergency Protective Order  
Charge: EPO/Family Abuse  
Offense date: Date request for district court form DC-626,  
EMERGENCY PROTECTIVE ORDER-FAMILY ABUSE is  
signed.  
Hearing date: Date of filing with the court.  
Hearing type: DS (recommended)



**Step 2** The order is not docketed for hearing by the court.

Finalize the case using **GR-Granted**.

VCIN entry is not required for magistrate issued EPO'S.

**Step 3 Judge issued EPO:**

The victim asserts under oath that he/she is being subjected to an act of violence, force or threat.

The case is indexed in JCMS using the following codes:

Case type: **PE-Emergency Protective Order**

Charge: **EPO/Family Abuse**

Offense date: **Date of the request for district court form DC-626,  
EMERGENCY PROTECTIVE ORDER-FAMILY ABUSE**

Hearing date: **Date of filing with the court.**

Hearing type: **DS**

**Step 4** The order is docketed for hearing by the court.

Finalize the case using **GR-Granted** or **D-Denied/Dismissed**

**VCIN entry is required for judge issued EPO's.**

**PO Type-E**

Time Issued: Judge will note time issued and expiration time (required for PO type E. PO type E will write back to the service index with notice type of EPO.

**Comments:** If the court receives the district court form DC-373, NOTICE OF ISSUANCE OF EMERGENCY PROTECTIVE ORDER, the document is filed with the case. The notice is not indexed in the system. No further action is required on the notice.

### **C. Family Abuse Protective Orders**

The petitioner may initiate an action in which he or she seeks a protective order to prevent the abusing adult from further abusing the victim and other family or household members by filing a district court form DC-611, PETITION FOR PROTECTIVE ORDER – FAMILY ABUSE *with the intake officer* or, if the petitioner is represented by counsel, counsel may file the petition with the clerk of the juvenile and domestic relations district court. When a petition is filed with the intake office, the person seeking a protective order shall be provided an information sheet that includes an explanation of the conditions, procedures and time limits applicable to various protective orders. The petitioner may request a preliminary protective order or a protective order be issued.

If the party seeking protection is a juvenile, the case should be styled as

“\_\_\_\_\_, a minor, by his/her next friend, \_\_\_\_\_ v. \_\_\_\_\_” (E.g. “Suzy Q Smith, a minor, by her next friend, Steve Smith v. Bobby Brown”). The

juvenile's name should appear first, followed by an indication that it is being filed by a next friend, then followed by the next friend's name. The names of the parents of any minor (petitioner by next friend or respondent), need to be provided, along with addresses, by the intake office, as notice to the parents is required. The information for service may be provided on the petition or another addendum.

**D. Servicemembers Civil Relief Act Requirements For Default Judgment**

A default judgment may not be entered until the plaintiff files an affidavit (i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service. The district court form DC-418, AFFIDAVIT – DEFAULT JUDGMENT SERVICEMEMBERS CIVIL RELIEF ACT is available for use by plaintiffs. Failure to file the affidavit is not grounds to set aside an otherwise valid default judgment against a defendant who was not, at the time of service of process or entry of the default judgment, a service member. However, case law indicates that failure to comply with the affidavit requirement in a case involving a defendant who is a service member and whose military service interfered with his ability to respond to a suit creates a voidable default judgment. *See Flynn v. Great Atlantic Management Co.*, 246 Va. 93; *Matthews v. Allstate Ins. Co.*, 194 F. Supp. 459 (E.D. Va 1961). If the defendant is believed to be in military service and is unaware of the action, the court must appoint an attorney to represent the defendant prior to entry of a default judgment. The court must grant a stay of not less than ninety days upon request by appointed counsel or upon its own motion if the court believes that (i) there may be a defense that requires the defendant's presence or (ii) counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists after due diligence. If the service member cannot be contacted within the first ninety-day stay period, a default judgment may be entered, but the service member may attack the judgment and the attorney's actions shall not bind him. If the service member is believed to be in military service and has been provided notice of the action, the court may grant a stay of ninety days or more upon its own motion, and shall grant a stay upon application of a service member with notice, if such service member provides (i) a letter setting forth the reasons why his military duties materially affect his ability to appear, and a date on or after which he could appear and (ii) a letter from his commanding officer stating that his service precludes his ability to appear and that he is not authorized to take leave. Active duty status alone, even in another state, does not necessarily "materially affect" one's ability to appear. Application for this stay does not constitute a waiver of jurisdictional defenses. A service member may apply for additional stays, but the court need not grant them. If the court refuses to grant an additional stay after the first ninety-day stay and the service member still cannot appear by reason of his military service, then the court must appoint an attorney to represent him before entering default judgment. If appointment of counsel is required, the court may assess attorneys' fees and costs against any party, as the court deems appropriate, and shall direct in its order which of the parties shall pay. Such fees and costs shall not be assessed against the Commonwealth unless it is the party that obtains the judgment. The Servicemembers Civil Relief Act covers National Guard members who are in Title 10 status. Title 10 status means they are paid and under the

direct control of the federal government. Members who are in a Title 32 status, paid and trained by the United States Armed Forces but under control of the respective state governors, are covered by the Servicemembers Civil Relief Act if they are in that status pursuant to a contingency mission specified by the President or Secretary of Defense. Members who are paid by and under the command of their states' governors are not covered under this Act. A service member who did not have notice of an action that resulted in a default judgment may petition the court to reopen a case within ninety days of his release from service. The court shall rehear the matter and allow the service member to defend the action only if (i) the service member was materially affected in making a timely defense by reason of military service and (ii) the service member has a meritorious or legal defense to the action or some part thereof.

**E. Initial Petition Procedures**

- Step 1** The petitioner, or his/her attorney, files the district court form DC-611, PETITION FOR PROTECTIVE ORDER - FAMILY ABUSE along with the district court form DC-621, NON-DISCLOSURE ADDENDUM. This non-disclosure provision is automatic and the protected person does NOT have to file the district court form DC-301, REQUEST FOR CONFIDENTIALITY BY CRIME VICTIM to prevent disclosure.

If children are to be a part of the protective order, the district court form DC-620, AFFIDAVIT (UCCJEA) will be filed. **CAUTION:** 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 his family except as required by law, as necessary for law-enforcement purposes, or by order for good cause shown.

Petition must be attested or an affidavit attached only if the petitioner is requesting the issuance of an *ex parte* preliminary protective order. There are no fees for filing a district court form DC-611, PETITION FOR PROTECTIVE ORDER - FAMILY ABUSE.

The clerk, upon receiving the district court form DC-611, PETITION FOR PROTECTIVE ORDER – FAMILY ABUSE, and the district court form DC-621, NON-DISCLOSURE ADDENDUM, should inquire as to whether a preliminary order of protection is being sought. If such an order is sought, an *ex parte* hearing is scheduled the same day.

- Step 2** Clerk sets up case in the Adult division with a Case Type **FP-Family Abuse Protective Order**. The clerk should utilize the functions of the interface with DJJ-Court Services Unit to bring forward information already entered into the system. See JCMS User's Guide for instructions.

**Step 2** Charge: PPO/Family abuse Va. Code § 16.1-253.1.  
(cont'd) Offense date: Date of petition.  
Hearing type: **PR**

**Step 3** *Ex parte* hearing is held, and Judge grants or denies preliminary protective order.

If PPO denied, update the disposition as **D-Dismissed**.

If granted, a preliminary protective order is issued, using the district court form DC-627, PRELIMINARY PROTECTIVE ORDER – FAMILY ABUSE. This order will include any conditions and limitations being placed upon the respondent, and will state date of full hearing.

Date of next hearing must be within fifteen days. Update the case using the continuance code of **PPO-Preliminary Protective Issued** and a hearing type of **DS**.

If the Preliminary Protective Order is denied but the case is continued to the 15-day hearing, update the case using the continuance code of **NPP-No Preliminary Protective Order Issued** and a hearing type of **DS**.

**Step 4** For instruction on entering PPO into VCIN via the interface, refer to JCMS User's Guide. Entry into VCIN is required **forthwith** but in all cases no later than the end of the business day on the day the order is issued *only* if the order has not expired. Data is sent electronically (through JCMS) to the Virginia Criminal Information Network (VCIN) system.

**Step 5** When the district court form DC-627, PRELIMINARY PROTECTIVE ORDER – FAMILY ABUSE is issued, the clerk shall have the petitioner served with a copy of the petition, affidavit and the PPO.

**Step 6** Clerk forwards copy of the district court form DC-627, PRELIMINARY PROTECTIVE ORDER – FAMILY ABUSE issued by the court along with the petition and a copy of the affidavit to the local law enforcement agency to be served **forthwith** on the alleged abusing adult.

A copy of the front and back of the district court form DC-627, PRELIMINARY PROTECTIVE ORDER – FAMILY ABUSE may be faxed to the local law enforcement agency. The hard copy of the district court form DC-627, PRELIMINARY PROTECTIVE ORDER – FAMILY ABUSE shall be sent **forthwith** but in all cases no later than the end of the business day on the day the order is issued to local law enforcement agency for review and further entry of additional information into VCIN.

- Step 6 (cont'd)** The district court form DC-627, PRELIMINARY PROTECTIVE ORDER – FAMILY ABUSE becomes **effective upon service** on the allegedly abusing person.

There is no fee for service of this order.

- Step 7** Upon motion of the respondent and for good cause shown, the court may continue the hearing.

If the court does not find good cause and does not continue the “15 day hearing,” the district court form DC-627, PRELIMINARY PROTECTIVE ORDER – FAMILY ABUSE shall remain in effect until the hearing. Upon granting the respondent’s request for a continuance, the Court should reissue the district court form DC-627, PRELIMINARY PROTECTIVE ORDER – FAMILY ABUSE with a new expiration date reflecting the continuance. The conditions of the initial district court form DC-627, PRELIMINARY PROTECTIVE ORDER – FAMILY ABUSE will be reflected in the subsequent order. This subsequent order must be served on the parties, entered into VCIN by the clerk as described above, and forwarded to the local law enforcement agency **forthwith** but in all cases no later than the end of the business day on the day the order is issued.

If the respondent fails to appear at this hearing because the respondent was not personally served, or if personally served was incarcerated and not transported to the hearing, the court may extend the protective order for a period not to exceed six months. The extended protective order shall be served **forthwith** on the respondent.

The clerk shall attach a copy of district court form DC-621, NON-DISCLOSURE ADDENDUM Petitioner’s copy ONLY for service, at which time the serving officer will destroy the copy.

At the judge’s discretion, a preliminary protective order may be issued for up to another fifteen days OR, with the consent of the respondent or his/her counsel, a protective order is issued until the subsequent hearing date and time beyond the fifteen-day limitation for preliminary protective orders.

- Step 8** If a hearing is not requested earlier, or a continuance has not been granted, a full hearing must be held within fifteen days. At this hearing, the court may issue a DC-650, PROTECTIVE ORDER - FAMILY ABUSE protective order if the court finds that the petitioner has proven the allegation of family abuse by a preponderance of the evidence.

If petition for a Protective Order - Family Abuse is denied, case is

**Step 8 (cont'd)** updated on the hearing update tab, as **D-Denied**. If granted, update the disposition as **GR-Granted**.

District court form DC-650, PROTECTIVE ORDER-FAMILY ABUSE is used and will include any condition or limitations being placed on the respondent, and will state the amount of time the protective order is valid, not to exceed two years. Entry into VCIN is required **forthwith** but in all cases no later than the end of the business day on the day the order is issued.

The clerk should serve copy on the petitioner and respondent before leaving court, if at all possible. The district court form DC-650, PROTECTIVE ORDER - FAMILY ABUSE shall be sent to local law enforcement **forthwith** but in all cases no later than the end of the business day on the day the order is issued for service.

A temporary child support order may be issued for the support of any children of the petitioner whom the respondent is obligated to support. Use the 2nd page of the district court form DC-650, PROTECTIVE ORDER - FAMILY ABUSE. This temporary support order terminates upon determination of support pursuant to Va. Code § 20-108.1.

The court may assess costs and attorney's fees against either party, regardless of whether an Order of Protection has been issued.

**Step 9** Respondent must surrender concealed carry weapons permit immediately, clerk will retain permit until the expiration date entered by the judge or magistrate.

Concealed handgun permit is to be returned, upon request, upon expiration of protective order. It is recommended that the court require the respondent to appear in person with identification for the permit to be returned.

**Step 10** Although indexed as an Adult (criminal) case, the proceedings, and subsequently the appeal, are civil in nature. Appeal should be noted on district court form DC-475, NOTICE OF APPEAL - CIVIL. See appendix on "Appeals" for step-by-step procedures.

1. Forms

DC-475 NOTICE OF APPEAL - CIVIL  
DC-611 PETITION FOR PROTECTIVE ORDER – FAMILY ABUSE  
DC-621 NON-DISCLOSURE ADDENDUM  
DC-626 EMERGENCY PROTECTIVE ORDER – FAMILY ABUSE  
DC-627 PRELIMINARY PROTECTIVE ORDER – FAMILY ABUSE

DC-650	PROTECTIVE ORDER – FAMILY ABUSE
DC-652	ORDER DISSOLVING PROTECTIVE ORDER
DC-684	<u>FILING OF FOREIGN PROTECTIVE ORDER</u>

2. References

<u>§ 16.1-253</u>	Preliminary protective order.
<u>§ 16.1-253.1</u>	Preliminary protective orders in cases of family abuse; confidentiality.
<u>§ 16.1-253.4</u>	Emergency protective orders authorized in certain cases; penalty.
<u>§ 16.1-279.1</u>	Protective order in cases of family abuse.

**II. PROTECTIVE ORDERS (§ 19.2-152.9)**

**A. Emergency Protective Orders**

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. See district court form DC-382, EMERGENCY PROTECTIVE ORDER

An emergency protective order should be issued when a law-enforcement officer or an alleged victim asserts under oath to a judge or magistrate that such person is being or has been subjected to an act of violence, force or threat and on that assertion or other evidence the judge or magistrate finds that (i) there is probable danger of a further such act being committed by the respondent against the alleged victim or (ii) a petition or warrant for the arrest of the respondent has been issued for any criminal offense resulting from the commission of an act of violence, force or threat. A law enforcement officer may request an emergency protective order orally, in person or by electronic means.

Virginia Code § 16.1-264 provides that a law-enforcement officer may effect service of an emergency protective order by personally serving the respondent with a notification of the issuance of the order. The notice, district court form DC-373 Notice of Issuance of Emergency Protective Order, must contain the necessary information and the requirements of the emergency protective order. The officer making service shall enter or cause to be entered the information into the Virginia Criminal Information Network (VCIN) and make due return to the court.

**B. Procedure - Emergency Protective Order**

- Step 1 Magistrate issued EPO:**  
The Clerk receives district court form DC-382, EMERGENCY PROTECTIVE ORDER

- Step 1 (cont'd)** The case is indexed in JCMS using the following codes:  
Case type: PE-Emergency Protective Order  
Charge: EPO  
Offense date: Date request for district court form DC-382,  
EMERGENCY PROTECTIVE ORDER is signed.  
Hearing date: Date of filing with the court.  
Hearing type: DS.
- Step 2** The order is not docketed for hearing by the court.  
Finalize the case using GR-Granted.  
**VCIN entry is not required for magistrate issued EPO'S.**
- Step 3 Judge issued EPO:**  
The victim asserts under oath that he/she is being subjected to an act of violence, force or threat.  
The case is indexed in JCMS using the following codes:  
Case type: PE-Emergency Protective Order  
Charge: EPO  
Offense date: Date of the request for district court form DC-382,  
EMERGENCY PROTECTIVE ORDER.  
Hearing date: Date of filing with the court.  
Hearing type: DS
- Step 4** The request is docketed for hearing by the court.  
Finalize the case using GR-Granted or D-Denied/Dismissed  
**VCIN entry is required for judge issued EPO'S.**  
PO Type-E  
Time Issued: Judge will note time issued and expiration time (required for PO type E. PO type E will write back to the service index with notice type of EPO.

**C. Preliminary Protective Orders and Protective Orders**

If the person involved comes within the jurisdiction of the juvenile court, a district court form DC-383, PETITION FOR PROTECTIVE ORDER may be filed. If the party seeking protection is a juvenile, the case should be styled as “\_\_\_\_\_, a minor, by his/her next friend, \_\_\_\_\_ v. \_\_\_\_\_” (E.g. “Suzy Q Smith, a minor, by her next friend, Steve Smith v. Bobby Brown”). The juvenile's name should appear first, followed by an indication that it is being filed by a next friend, then followed by the next friend's name. The names of the parents of any minor (petitioner by next friend or respondent), need to be provided, along with addresses, by the intake office, as notice to the parents is required. The information for service may be provided on the DC-511 or another addendum.

Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable period of time, subjected to an act of violence, force or threat, or (ii) a petition or warrant has been issued for the arrest of the alleged perpetrator for any



criminal offense resulting from the commission of an act of violence, force or threat, 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 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.

This order is entered using district court form DC-384, PRELIMINARY PROTECTIVE ORDER. It is essential that these tasks be undertaken promptly so that there will be no lapse in the protection to be afforded the petitioner.

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 that the petitioner is or has been, within a reasonable period of time, subjected to an act of violence, force or threat by a preponderance of the evidence. This order is entered using district court form DC-385, PROTECTIVE ORDER

A criminal conviction of stalking/sexual battery pursuant to Va. Code § 18.2-60.3 will REQUIRE the court to issue an order prohibiting contact between the defendant and the victim, victim's family, or household member.

**D. Procedure – Preliminary Protective Order and Protective Order**

The following procedures should be followed when processing a Preliminary Protective Order (PPO) or Protective Order (PO).

**Step 1** Alleged victim requests a Preliminary or Protective Order by filing a district court form DC-383, PETITION FOR PROTECTIVE ORDER along with DC-621, NON-DISCLOSURE ADDENDUM.

**NOTE:** No fees shall be charged for filing the petition.

Upon filing of the petition and the district court form DC-621, NON-DISCLOSURE ADDENDUM the clerk should inquire as to whether a preliminary order of protection is being sought. If so, an *ex parte* hearing is scheduled the same day the petition is filed.

Petition must be attested or an affidavit attached only if the petitioner is requesting the issuance of an *ex parte* preliminary protective order.

This non-disclosure provision is automatic and the protected person does NOT have to file the district court form DC-301, REQUEST FOR CONFIDENTIALITY BY CRIME VICTIM to prevent disclosure.

**Step 1 (cont'd)** **CAUTION:** 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 his family except as required by law, as necessary for law-enforcement purposes, or by order for good cause shown.

The petitioner alleges that (i) the petitioner is or has been, within a reasonable period of time, subjected to an act of violence, force or threat, or (ii) a petition or warrant has been issued for the arrest of the alleged perpetrator for any criminal offense resulting from the commission of an act of violence, force or threat,

**Step 2** For cases involving an adult respondent, the clerk sets up the case in the Adult Division with a Case Type AP. The juvenile's name should not be entered in the complainant name field. Enter the complainant as "juvenile".

For cases involving a juvenile respondent, the clerk sets up the case in the Juvenile Civil Division with a Case Type of AP.

In cases involving a juvenile respondent and/or victim, the court may appoint a Guardian *ad litem* to represent the best interests of the minor.

**NOTE:** If a Guardian *ad litem* is appointed to represent a juvenile, the assessment of the GAL fee only applies in cases arising under Va. Code 16.1-241(a). No GAL fee should be assessed to the parent of a juvenile when appointed to cases involving protective orders.

Charge PPO Va. Code § 19.2-152.10.

**Step 3** If PPO requested, *ex parte* hearing is held.

At the hearing, a preliminary protective order may be issued, Va. Code § 19.2-152.9, using the district court form DC-384, PRELIMINARY PROTECTIVE ORDER.

This order will include any conditions and limitations being placed upon the respondent, and will state the date of full hearing.

This order is valid for fifteen days.

Order shall state date of next full hearing.

The clerk should have the petitioner and parents, if applicable, served with a copy of the petition and the PPO. The clerk should forward to

- Step 3 (cont'd)** law enforcement a copy of the order, petition and affidavit to be served on the respondent, and separate documents to be served on the parents, if a minor.
- Step 4** The clerk shall **forthwith** but in all cases no later than the end of the business day on the day the order is issued send a copy of the district court form DC-384, PRELIMINARY PROTECTIVE ORDER to the appropriate law enforcement agency for their review and further entry of information into VCIN.
- Step 5** If a hearing is not requested earlier, or a continuance has been granted, a full hearing must be held within fifteen days. 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 petition or warrant, or a conviction of, any criminal offense resulting from the commission of an act of an act of violence, force or threat or (ii) a hearing held pursuant to subsection D of § 19.2-152.9.
- Step 6** Hearing for Protective Order is set within fifteen days of issuance of Preliminary Protective Order.
- Hearing type **DS**.
- Step 7** At the full hearing on the petition, the court may issue district court form DC-385, PROTECTIVE ORDER, pursuant to Va. Code § 19.2-152.10. The order will impose conditions of behavior and prohibit contact between the respondent and petitioner/ defendant as deemed necessary. The clerk should serve copy on the petitioner and respondent, and parents if applicable, before leaving court, if at all possible. If service is not obtainable by the clerk, the district court form DC-385, PROTECTIVE ORDER shall be sent **forthwith** but in all cases no later than the end of the day on the day the order is issued to local law enforcement agency for service. The order may be issued for a period of up to two years.
- Step 8** The clerk shall **forthwith** but in all cases no later than the end of the business day on the day the order is issued send a copy of the district court form DC-385, PROTECTIVE ORDER to the appropriate law enforcement agency for their review and further entry of information into VCIN.
- Step 9** Respondent will surrender concealed carry weapons permit, if any, clerk will retain permit until the expiration date entered by the judge or magistrate.
- Concealed carry weapons permit is to be returned, upon request, upon

**Step 9 (cont'd)** expiration of protective order. It is recommended that the respondent be required to appear in person with identification for the return of the permit.

**Step 10** Clerk closes case in JCMS with Disposition Code of **GR-Granted**.

**Step 11** For adults, although indexed as an Adult (criminal) case, the proceedings, and subsequently the appeal are civil in nature.

Appeal should be noted on district court form DC-475, NOTICE OF APPEAL – CIVIL, if the respondent is an adult. For step-by-step procedures, *See* appendix on “Appeals”.

For cases in which the respondent is a juvenile, utilize appeal form DC-581-NOTICE OF APPEAL – JUVENILE CIVIL APPEALS.

1. Forms

- DC-382 EMERGENCY PROTECTIVE ORDER
- DC-383 PETITION FOR PROTECTIVE ORDER
- DC-384 PRELIMINARY PROTECTIVE ORDER
- DC-385 PROTECTIVE ORDER
- DC-621 NON-DISCLOSURE ADDENDUM
- DC-651 ADDENDUM-PROTECTIVE ORDER
- DC-652 ORDER DISSOLVING PROTECTIVE ORDER

2. References

- § 18.2-60.3 Stalking; penalty.
- § 19.2-152.8 Emergency protective orders authorized in cases of acts of violence, force or threat.
- § 19.2-152.9 Preliminary protective orders in cases of acts of violence, force or threat.
- § 19.2-152.10 Protective order in cases of acts of violence, force or threat.

**III. EXTENSION OF PRELIMINARY PROTECTIVE ORDERS**

If the respondent fails to appear at the 15-day hearing because the respondent was not personally served, or if personally served was incarcerated and not transported to the hearing, the court may extend the preliminary protective order for a period not to exceed six months. The extended preliminary protective order shall be served **forthwith** on the respondent. 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.

**IV. EXTENSION OF PROTECTIVE ORDERS**

A petitioner who has obtained a protective order under Va. Code §16.1-279.1 or § 19.2-152.10 may file a motion requesting a hearing to extend the order. The petitioner will complete the DC-630, MOTION TO AMEND OR REVIEW ORDER. Proceedings to extend a protective order shall be given precedence on the docket. The court may grant an extension for a period not to exceed two years if the respondent continues to pose a threat to the health or safety of the petitioner, petitioner's family and household members. The extension may include family or household members identified in the original order, even though they may no longer be considered family or household members. The extension shall expire at 11:59 p.m. on the last day specified or on the last day of the two-year period if no date is specified. There is no limit on the number of extensions that may be requested or issued. The request may be made on an original or modified order. The motion is entered as a subsequent action of the original protective order with the case type of MP-Motion to Modify Protective Order. If the motion is granted, a new protective order will be issued. Update the motion with a final disposition of OE-Protective Order Extended. Entry into VCIN is required **forthwith** but in all cases no later than the end of the business day on the day the order is issued. The clerk shall **forthwith** but in all cases no later than the end of the business day on the day the order is issued send a copy of the protective order to the appropriate law enforcement agency for their review and further entry of information into VCIN.

**V. PROTECTIVE ORDERS ISSUED FROM CRIMINAL CASE**

If a protective order is issued on district court form DC-650, PROTECTIVE ORDER-FAMILY ABUSE, pursuant to § 16.1-279.1 as part of a disposition of a criminal matter pursuant to § 16.1-278.14, the protective order should receive a subsequent number from the criminal case. It is necessary to number and enter the protective order for tracking purposes. The clerk will enter the case as a subsequent action number of underlying offense using case type PC. Entry into VCIN is required **forthwith** but in all cases no later than the end of the business day on the day the order is issued. The clerk shall **forthwith** but in all cases no later than the end of the business day on the day the order is issued send a copy of the protective order to the appropriate law enforcement agency for their review and further entry of information into VCIN. If the criminal case is appealed, the protective order is appealed as well since it is part of the disposition of which the defendant is appealing. It is not necessary to complete an appeal notice for the protective order. A protective order issued in cases of family abuse pursuant to § 16.1-279.1, shall remain in effect upon petition for or the pendency of an appeal or writ of error unless ordered suspended by the judge of a circuit or so directed in a writ of supersedeas by the Court of Appeals or the Supreme Court.

If a protective order is issued on district court form DC-385, PROTECTIVE ORDER, pursuant § 19.2-152.10 as part of a disposition of a conviction of Va. Code § 18.2-60.3, the protective order should receive a subsequent number from the criminal case. It is necessary to number and enter the protective order for tracking purposes. The clerk will enter the case as a subsequent action number of underlying offense using case type PC. Entry into