

COURTS NOT OF RECORD: JUVENILE AND DOMESTIC RELATIONS COURTS.

CRIMINAL PROCEDURE: TRIAL AND ITS INCIDENTS - VENUE — ARREST.

Proper jurisdiction for prosecution of alleged criminal violation of preliminary, emergency or final protective order in cases of family abuse is county or city in which alleged violation occurs. Proper jurisdiction for alleged violation of provision of protective order not considered misdemeanor violation is jurisdiction in which order was issued. Person found guilty of criminal violation of protective order is not also subject to contempt of court sanction. Court in locality in which protective order was issued is proper court to modify or dissolve order. For purpose of establishing venue for issuance of protective order in case of family abuse, "principal residence" means person's primary dwelling place; court may consider any relevant facts in determining what constitutes person's principal residence. No authorization to stay effectiveness of protective order during abuser's incarceration. Court may modify protective order, when justified, to extend length of its effectiveness not to exceed two years from date of issuance; under appropriate circumstances, court may issue new protective when previous order expires. Commonwealth's attorney has no statutory authority to represent petitioner in protective order hearing that is civil in nature and does not result in criminal conviction or penalty.

The Honorable Janet D. Howell

Member, Senate of Virginia

November 30, 1998

You ask numerous questions regarding the issuance and alleged violation of protective orders in cases of family abuse occurring under the Juvenile and Domestic Relations District Court Law.¹ Your questions relate to the venue for prosecution of alleged violations, and for modification, of the orders, the penalties for violation of the orders, and the authority of a Commonwealth's attorney to represent a petitioner in a protective order hearing.

Section 16.1-253.1 of the *Code of Virginia* authorizes the issuance of preliminary protective orders in cases of family abuse; § 16.1-253.4 authorizes the issuance of emergency protective orders in such cases; and § 16.1-279.1 authorizes the issuance of final protective orders. Section 16.1-243(A)(3) provides that venue for proceedings *seeking* a protective order resulting from family abuse

shall be commenced where (i) either party has his or her principal residence (ii) the abuse occurred or (iii) a protective order 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.

Section 16.1-253.1(A) authorizes the court to issue a preliminary protective order upon the filing of a petition alleging family abuse. The order may impose conditions on the allegedly abusing family member "[p]rohibiting acts of family abuse"² and other contacts with the petitioner or the petitioner's family or household members;³ "[g]ranteeing the petitioner possession of the premises occupied by the parties to the exclusion of the allegedly abusing person"⁴ and temporary possession or use of a jointly owned motor vehicle,⁵ and requiring the allegedly abusing person to provide "suitable alternative housing" for the petitioner and other family or household members.⁶ Preliminary protective orders may be issued in an ex parte proceeding⁷ and become effective upon service on the allegedly abusing person.⁸ Preliminary orders must, however, specify a date for a full hearing, which is to be held within fifteen days of issuance of the order.⁹

Section 16.1-253.1(C) provides that, "[e]xcept as otherwise provided in § 16.1-253.2, a violation of the order shall constitute contempt of court." Section 16.1-253.2 applies to preliminary, emergency and final protective orders, and states:

In addition to any other penalty provided by law, any person who violates any provision of a protective order ... 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 ... shall be guilty of a Class 1 misdemeanor.

Section 16.1-253.4(B) authorizes the issuance of a written or oral ex parte emergency protective order upon the sworn assertion of a law-enforcement officer or an allegedly abused person and upon a finding that (i) a warrant for "assault and battery against a family or household member"¹⁰ has been issued, or (ii) reasonable grounds exist for believing the respondent has committed family abuse, and (iii) the probability exists in each case for further abuse. In addition to the juvenile court judges, the circuit court and general district court judges and magistrates may issue emergency protective orders.¹¹ An emergency protective order may contain the same type of conditions imposed under § 16.1-253.1 in a preliminary protective order, other than those requiring the allegedly abusing person to grant the petitioner use of a motor vehicle or suitable alternative housing.¹²

Section 16.1-253.4(C) provides that an emergency protective order expires "seventy-two hours after issuance," or if the juvenile court is not in session at the time of expiration, at "5 p.m. of the next business day" that the court is in session. In contrast, the court may issue a final protective order under § 16.1-279.1 "[a]t a full hearing on the petition"¹³ to be held within fifteen days of the issuance of a preliminary protective order under § 16.1-253.1.¹⁴

A protective order issued under § 16.1-279.1 may contain any of the provisions specified in § 16.1-253.1.¹⁵ The order also may require the respondent to participate in treatment or counseling¹⁶ and may contain "[a]ny other relief necessary for the protection of the petitioner and family or household members of the petitioner."¹⁷ The order may be issued for a specified period but, unless otherwise authorized by law, not for longer than two years.¹⁸ Like § 16.1-253.1(C) regarding preliminary protective orders, § 16.1-279.1(C) states that "[e]xcept as otherwise provided in § 16.1-253.2, a violation of a protective order issued under this section shall constitute contempt of court."

You inquire first regarding the proper jurisdiction for prosecution of an alleged violation of any provision of a protective order specified in § 16.1-253.2. Section 19.2-244 provides that "[e]xcept as otherwise provided by law, the prosecution of a criminal case shall be had in the county or city in which the offense was committed." While § 16.1-243(A)(3) establishes venue for purposes of *seeking* a protective order, it does not establish venue for purposes of *prosecution* under § 16.1-253.2. Accordingly, pursuant to § 19.2-244, prosecution for an alleged violation of the provisions in a preliminary, emergency or final protective order specified in § 16.1-253.2 is to be held in the jurisdiction in which the alleged violation occurred.¹⁹

Your second question concerns the proper jurisdiction for an alleged violation of a provision specified in a protective order, which is not so specified in § 16.1-253.2, such as granting petitioner the use of a jointly owned motor vehicle.²⁰ Pursuant to §§ 16.1-253.1(C) and 16.1-279.1(C), a violation of a protective order, "[e]xcept as otherwise provided in § 16.1-253.2," constitutes contempt of court. Accordingly, the proper jurisdiction for an alleged violation of a provision not encompassed within § 16.1-253.2 is the jurisdiction in which the order was issued.²¹

You ask next whether a person who violates any provision specified in § 16.1-253.2 may be found guilty of both a Class 1 misdemeanor and contempt of court. Before 1996, §§ 16.1-253.1(C) and 16.1-279.1(C) provided that "[a]ny" violation of a protective order constitutes contempt of court.²² The 1996 amendment added the following language: "Except as otherwise provided in § 16.1-253.2, a" violation of a protective order constitutes contempt."²³ The clear intent of this language is to remove those violations specified in § 16.1-253.2 from the contempt of court sanction provided in §§ 16.1-253.1(C) and 16.1-279.1(C) and to establish such violations as criminal offenses. Thus, a person found guilty of a Class 1 misdemeanor under § 16.1-253.2 is not subject to the contempt of court sanction under §§ 16.1-253.1(C) and 16.1-279.1(C).

Your next question is whether a protective order may be modified or dissolved only by the court in the locality in which the protective order was issued. An original preliminary protective order, emergency protective order and a final order of protection issued by a court must specify that the person served may file a motion "with the court" to request a hearing "to dissolve or modify the order."²⁴ Thus, the court in the locality in which the protective order was issued is the proper court to modify or dissolve the order.

You also inquire concerning the criteria for determining "principal residence" under § 16.1-243(A)(3). Neither § 16.1-243(A)(3) nor any other provision of the Virginia Code defines the term "principal residence." In the absence of a legislative intent to the contrary, words in statutes are to be given their ordinary meaning.²⁵ The word "principal" ordinarily is defined as that which is chief or foremost in rank.²⁶ While the word "residence" may have a legal meaning that varies depending on the context and purpose of the statute,²⁷ the ordinary meaning of the word is "[t]he place in which one lives; dwelling."²⁸ It is my opinion that, for the purposes of establishing venue for the issuance of a protective order in cases of family abuse, the term "principal residence" means merely a person's primary dwelling place. A court may consider any relevant facts in determining what constitutes a person's principal residence.

You next ask whether a protective order issued pursuant to § 16.1-279.1 may be stayed. You provide a hypothetical situation in which a protective order is issued for the maximum two-year period permitted by that statute, and, shortly after issuance, the abusive party is incarcerated for three years. You ask whether the order may be stayed during the period of incarceration.

The jurisdiction, practice and procedure of the juvenile and domestic relations district courts are entirely statutory.²⁹ No statute expressly authorizes the court to stay the effectiveness of a protective order during a period when the abusing person is incarcerated or otherwise unable to violate the provisions of the protective order.³⁰ Moreover, while § 16.1-227 provides that a judge of a juvenile and domestic relations district court "shall possess all necessary and incidental powers and authority" to attain the purpose of protecting the rights of victims of family abuse, the court must not exercise such powers and authority in a manner inconsistent with the express provisions of the Juvenile and Domestic Relations District Court Law.³¹

Pursuant to § 16.1-279.1(B), the court may specify in the order the period of time that the order remains in effect; "however, unless otherwise authorized by law," the period may not exceed two years. Section 16.1-279.1(F) authorizes either party at any time the protective order is in effect to file a motion with the court requesting a hearing to modify the order. It is my opinion that, while the court would have the authority to modify a protective order by extending the length of time specified in the order when the situation justifies such action,³² the extension may not result in a period that exceeds two years from the date of issuance of the order. Of course, under appropriate circumstances, a new protective order also could be issued by the court when the previous order expires.

Your final question is whether it is appropriate for a Commonwealth's attorney to represent a petitioner at a protective order hearing held pursuant to § 16.1-253.1 or § 16.1-279.1. A 1997 opinion of the Attorney General concludes that, because such proceedings are civil in nature and

a criminal conviction or sanction may not result from the hearing seeking the order, a Commonwealth's attorney has no statutory authority to represent the petitioner in the proceeding.³³

¹Va. Code Ann. tit. 16.1, ch. 11, §§ 16.1-226 to 16.1-355.

²Section 16.1-253.1(A)(1).

³Section 16.1-253.1(A)(2)-(3).

⁴Section 16.1-253.1(A)(4).

⁵Section 16.1-253.1(A)(5).

⁶Section 16.1-253.1(A)(6).

⁷Section 16.1-253.1(A). An "ex parte proceeding" is "[a]ny judicial or quasi judicial hearing in which only one party is heard as in the case of a temporary restraining order." Black's Law Dictionary 576 (1990).

⁸Section 16.1-253.1(C).

⁹Section 16.1-253.1(B).

¹⁰Section 18.2-57.2(A), (B).

¹¹See § 16.1-253.4(A).

¹²Compare §§ 16.1-253.1(A)(1)-(6) and 16.1-253.4(B)(1)-(3).

¹³Section 16.1-253.1(D).

¹⁴Section 16.1-253.1(B).

¹⁵Compare §§ 16.1-253.1(A)(1)-(6) and 16.1-279.1(A)(1)-(7).

¹⁶Section 16.1-279.1(A)(6).

¹⁷Section 16.1-279.1(A)(7).

¹⁸Section 16.1-279.1(B).

¹⁹A 1997 opinion of the Attorney General concludes that prosecution under § 16.1-253.2 for violation of a preliminary protective order would be in the locality where the violation occurs. See 1997 Op. Va. Att'y Gen. 83, 84. The same result would apply to a foreign protective order given effect within the Commonwealth pursuant to § 16.1-279.1(E). Such an order is to be "enforced in the Commonwealth as if it were an order of the Commonwealth." Section 16.1-279.1(E).

²⁰Compare § 16.1-253.2 with §§ 16.1-253.1(A)(5) and 16.1-279.1(A)(4).

²¹ See generally § 18.2-456(5) (providing for court punishment for contempt regarding disobedience or resistance to order of court).

²² 1996 Va. Acts ch. 866, at 1593, 1601 (§ 16.1-253.1(C)), 1604 (§ 16.1-279.1(C)).

²³ *Id.*

²⁴ Sections 16.1-253.1(B), 16.1-253.4(C), 16.1-279.1(F).

²⁵ See Op. Va. Att'y Gen.: 1996 at 114, 115; 1990 at 233, 234.

²⁶ The American Heritage Dictionary 985 (2d c. ed. 1985).

²⁷ See 1987-1988 Op. Va. Att'y Gen. 486, 487.

²⁸ The American Heritage Dictionary, *supra*, at 1051.

²⁹ See Fairfax County Dept. of Human Dev. v. Donald, 251 Va. 227, 467 S.E.2d 803 (1996); Walker v. Dept. of Public Welfare, 223 Va. 557, 562, 290 S.E.2d 887, 890 (1982).

³⁰ Compare 1978-1979 Op. Va. Att'y Gen. 178, 180 (district court may exercise inherent authority to stay order of commitment of allegedly mentally ill person and release person on bond or personal recognizance pending appeal).

³¹ See 1990 Op. Va. Att'y Gen. 119, 120 (court has discretion to deny use of tape recorders in hearing involving juvenile defendant, but denial of use in hearings involving adult defendant would be inconsistent with statutes).

³² See Goodwin v. Com., 23 Va. App. 475, 483, 477 S.E.2d 781, 784 (1996) (limited duration of protective order supports inference that purpose is to prevent abuse during time abuse is likely to occur; court's authority to modify order ensures that order remains rationally related to this remedial goal).

³³ See 1997 Op. Va. Att'y Gen. 82. While the opinion considers only orders of protection under § 16.1-279.1, the same reasoning would apply to preliminary protective orders under § 16.1-253.1.