REPORT OF THE
VIRGINIA STATE CRIME COMMISSION

SB 641
Protective Orders in Dating Relationships

A BILL REFERRAL STUDY TO
THE HOUSE COURTS COMMITTEE AND
THE GENERAL ASSEMBLY OF VIRGINIA

COMMONWEALTH OF VIRGINIA
RICHMOND
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I. Authority

The *Code of Virginia*, § 30-156, authorizes the Virginia State Crime Commission to study, report and make recommendations on all areas of public safety and protection. Additionally, the Commission is to study matters "including apprehension, trial and punishment of criminal offenders." Section 30-158(3) provides the Commission the power to "conduct studies and gather information and data in order to accomplish its purposes as set forth in § 30-156. . .and formulate its recommendations to the Governor and the General Assembly."

Using the statutory authority granted to the Crime Commission, the staff conducted a study on protective orders in dating relationships.

II. Executive Summary

During the 2002 Session of the Virginia General Assembly, Senator John C. Watkins introduced Senate Bill 641 (SB 641), *see Attachment 1,* which would expand the definition of a family and household member (Va. Code § 16.1-228), and extend the availability of protective orders, to those in dating relationships. This bill was amended in the Senate, *see Attachment 2,* and after passing to the House of Delegates, was referred to the House Courts of Justice Committee where it was left in Committee pending referral and study by the Virginia State Crime Commission. As a result of the study effort, the following recommendations were made to expand the availability of protective orders to all individuals in the Commonwealth.

Recommendation

Expand the availability of protective orders to all individuals in the Commonwealth under the current laws addressing protective orders in cases of stalking (Va. Code §§ 19.2-152.9, 19.2-152.10).

III. Methodology

The Virginia State Crime Commission utilized three research methodologies to examine Senate Bill 641. First, a search for literature related to protective orders in dating relationships was conducted at the state level and nationwide. Second, other state statutes were examined for conformity to Virginia's protective order statutes. Third, Virginia's current statutory scheme regarding protective orders for family and household members and in cases of stalking was examined to determine the feasibility of these *Code* sections for expansion of protective orders.

IV. Background: Virginia Law

In 1997, the State of Virginia instituted a series of new laws surrounding family violence issues. These new laws included pro-arrest and mandatory arrest policies, as well as changes to the protective order statutes. Today the *Code of Virginia* specifies two situations where protective orders can be issued by a court in a civil proceeding: when a petitioner alleges he or she has been the victim of family abuse, and when a petitioner alleges he or she has been the victim of stalking, as defined by Va. Code § 18.2-60.3. In both situations, it is possible for the protective orders to be issued in three stages: an initial emergency protective order,[1] which lasts for up to 72 hours or the end of the next business day; a preliminary protective order,[2] which lasts until a full hearing can be held, and which must be held within fifteen days; and a "final" protective order,[3] which can last for up to two years. It is not necessary to go through all three stages, although generally there is a preliminary hearing before the full, contested hearing.

Family Abuse Protective Orders

Family abuse protective orders and stalking protective orders are defined differently, in terms of the allegations that must be proven before they can be issued, and in terms of the nature of the relationship that must exist between the petitioner and the respondent. Family abuse protective orders, as their very title suggests, can only be invoked when there has been family abuse committed. The definition of family abuse, found in Va. Code § 16.1-228, is:

> any act involving violence, force, or threat including any forceful detention, which results in physical injury or places one in reasonable apprehension of serious bodily injury and which is committed by a person against such person's family or household member.[4]

Family or household member, in turn, is defined as any of the following:[5]

- a person's spouse, whether or not the two of them are residing in the same home
- a person's former spouse, whether or not they reside in the same home
- a person's parents, stepparents, children, stepchildren, brothers, sisters, grandparents and grandchildren, whether or not they reside in the same home
- a person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law, **if** they reside in the same home

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[1] Va. Code §§ 16.1-253.4, 19.2-152.8
[2] Va. Code §§ 16.1-253.1, 19.2-152.9
[3] Va. Code §§ 16.1-279.1, 19.2-152.10
[4] This definition was slightly modified by House Bill 488 (Va. 2002), which was approved by the Governor on April 8, 2002, and which will go into effect on July 1, 2002. The most significant difference is that the phrase "reasonable apprehension of serious bodily injury," was changed to "reasonable apprehension of bodily injury."
[5] Va. Code § 16.1-228

- any individual who has a child in common with a person, regardless of whether or not they have ever been married or lived together
- any individual who cohabits or who, within the previous twelve months, cohabited with a person, and any children of either of them then residing in the same home with the person

Because of these statutory definitions, family abuse protective orders can be obtained in response to a wide variety of conduct; any threat that creates a reasonable apprehension of bodily injury will suffice. They are very adaptable, and when a judge issues a family abuse protective order, he can uniquely draft the language of the order to handle the specific circumstances of the case.[6] The only limit on their availability is that the person seeking protection must be related, as a family or household member, to the person that is making the threat.

As a result, family abuse protective orders cannot be issued in a variety of circumstances. When a person is in a dating relationship, but does not have a child in common with the threatening partner, and the two have not cohabited within the past twelve months, a court would not have the jurisdiction to issue a family abuse protective order. Similarly, a person who felt threatened by a neighbor, a former co-worker, or a fixated stranger, would be unable to petition for a family abuse protective order.

Stalking Protective Orders

The other type of protective order that can be applied for in a civil context is a stalking protective order. These orders do not depend upon a petitioner being able to demonstrate a relationship with the person making threats. Instead, they are available to anyone who can demonstrate that they have been subjected to stalking, **and** that a warrant for stalking has been taken out against the respondent.[7] The definition of stalking is found in Va. Code § 18.2-60.3(A):

> Any person 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 [stalking,] a Class 1 misdemeanor.

As with family abuse protective orders, this statutory definition places limits on the availability of stalking protective orders. While a wide variety of conduct can satisfy the definition of placing a person in reasonable fear of bodily injury, a stalking protective order can only be issued after a criminal proceeding has been instituted. If the threatened

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[6] *See* Va. Code § 16.1-279.1(A). A judge is allowed to prohibit contacts between the petitioner and the respondent to the extent he deems necessary for the health and safety of the persons; he can order the respondent to undergo counseling; and he can order "any other relief necessary for the protection of the petitioner and family or household members of the family." Va. Code § 16.1-279.1(A)(7).

[7] Va. Code § 19.2-152.9.

person has not yet sought to have a warrant taken out against the respondent for stalking, no protective order can be issued. And, because of the very definition of stalking, which requires conduct occurring "on more than one occasion," a stalking protective order cannot be obtained if only one threat has been made, no matter how dramatic or credible that threat might have been. While a judge has the ability, as with family abuse protective orders, to uniquely draft the wording of a stalking protective order to handle the special circumstances of a case,[8] as a practical matter, it is more difficult to obtain one because of these statutory requirements. As a result, there may be a number of instances where someone in dating relationship, or someone who has been threatened by a non-family member, would be unable to avail themselves of a stalking protective order.

Alternative legal processes

It should be noted that current **criminal** practice and procedure in Virginia often provide the "means" that are used to accommodate and deal with these limitations. In most cases, when a citizen is subjected to threatening conduct, whether an assault or otherwise, a criminal law will have been broken, and the victim can have a warrant taken out. Assaults and batteries are obviously crimes, covered by Va. Code § 18.2-57. Making a threat can be, depending upon the context, a violation of Va. Code § 18.2-416 (abusive language); § 18.2-427 (threatening language over a phone); or § 18.2-60 (sending a written threat). Any destruction of personal property, such as slashing tires or breaking a window, is a violation of Va. Code § 18.2-137. Of course, if anyone engages in threatening conduct on more than one occasion, they could be charged with stalking, in violation of Va. Code § 18.2-60.3.

Once a criminal warrant is served, the accused will be taken in front of a judicial officer for a determination on bail.[9] If bail is granted, the judicial officer has the authority to attach any conditions to the terms of the release as he feels are necessary to "assure [the defendant's] good behavior pending trial."[10] The *Code of Virginia* specifically mentions that such conditions may include the requirement to "avoid all contact with an alleged victim of the crime and with any potential witness."[11] As a practical matter, when someone is arrested for one of the above crimes, such as assault or sending a written threat, a magistrate or judge frequently orders as a condition of bail that the defendant have no contact with the victim pending trial. This operates like a simple "protective order," and a violation of the "no contact" terms can have serious consequences for the defendant—including a revocation of his bond, so that he is incarcerated until his trial date.[12] In this manner, the setting of an appropriate bond can play a role similar to that of a protective order in giving legal protection to a victim who has been threatened.

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[8] *See* Va. Code § 19.2-152.10. The code language here mirrors that of Va. Code § 16.1-279.1(A)(7), allowing a judge great latitude in crafting an order so as to provide "any other relief necessary." *See* note 6, *supra*.
[9] Va. Code § 19.2-80.
[10] Va. Code § 19.2-121.
[11] Va. Code § 19.2-123(3a)(iii).
[12] Va. Code § 19.2-123(B).

If the defendant is found guilty at trial, the judge is free to order, as part of any suspended sentence, that there be no further contact between the defendant and the victim.[13] Once again, this is a frequent condition of probation for a defendant who has been convicted of a crime such as assault or destruction of property. Such terms, which are a part of the court's Sentencing Order, operate like pre-trial bail conditions to create a simple kind of "protective order." If the convicted defendant violates the "no contact" terms of the Sentencing Order, he faces the revocation of his suspended sentence, and therefore, jail time.[14]

This is not to say that these legal mechanisms, which are a part of the regular criminal justice process, are the exact equivalent of protective orders. There are many deficiencies in employing bail conditions and probation terms solely to create "protective orders" for threatened victims. In instances where a person's threatening manner has not constituted a crime, and is not severe enough (or frequent enough) to justify a stalking warrant, no arrest warrant can be issued. Even if a warrant is issued, a court would have no authority to place any kind of restrictions upon a defendant if he were found not guilty. As the standard of proof in a criminal trial is always that of "beyond a reasonable doubt,"[15] it is far more difficult to bring a person within a court's authority in a criminal context than in the civil context. A person who meets the jurisdictional requirements to petition for a protective order faces a much easier burden, "a preponderance of the evidence" standard,[16] and thus will have a greater likelihood of success at obtaining a court order to prevent further contacts. When cases involve circumstantial evidence or conflicting testimony, a judge might be unable to find a suspect guilty, whereas in a civil context, that same evidence might be sufficient to have a protective order issued.

Beyond the comparable ease that a person would have in obtaining a protective order as opposed to making use of the criminal justice process for the same ends, it could also be argued that criminal cases and civil cases are meant to be distinct. As a public policy matter, many would feel it inappropriate to blend the two together, with criminal cases being employed solely for the purposes of obtaining civil remedies. Therefore, none of the above was intended to suggest that criminal procedure mechanisms are an adequate substitute for, or are a perfect complement to, the jurisdictional limitations that currently exist with Virginia's protective order statutes. Rather, it illustrates that even though a victim of dating violence might not be able to qualify for a protective order, they would not necessarily be without legal remedies, and could still avail themselves of the courts, in appropriate cases, with the help of prosecutors and Victim Witness personnel.

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[13] Va. Code § 19.2-303. The relevant language is worded broadly enough to allow a judge great latitude in drafting the Sentencing Order: "in addition may place the accused on probation under such conditions as the court shall determine…"

[14] Va. Code § 19.2-306 gives a court the authority to revoke a suspended sentence and impose the original sentence upon a defendant, "for any cause deemed by it sufficient."

[15] In re Winship, 297 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); Corbett v. Commonwealth, 210 Va. 304 (1969).

[16] Va. Code §§ 16.1-253.1(D); 19.2-152.9(D).

V. National Studies

Most of the national literature addressing protective orders in dating relationships never reviews the issue in depth. The National Center for Victims of Crime addresses protective orders in dating relationships in two brief overviews under its *Public Policy Issues*, but its coverage, too, is not exhaustive.[17]

The information they provide in their brief overview on legislative issues grapples with the same issue that will be addressed below regarding SB 641—how to properly define dating relationships.[18] Their overview also addresses inconsistencies in state laws where dating relationships are included in the laws related to the issuance of protective orders, but not in the laws relating to warrantless arrests and crime victim services. Finally, the overview examines how some states explicitly prohibit the issuance of protective orders in same-sex relationships.[19]

The information provided in their overview on dating violence addresses these protective orders as they relate to minors in dating relationships and dating on college campuses. The overview states that only seventeen states allow minors to apply for protective orders on their own, while other states permit or require the involvement of an adult to apply for the order on a minor's behalf, with that involvement sometimes being mandatory.[20] The overview stresses that given that "approximately one out of every three high school and college students has experienced sexual, physical, verbal, or emotional violence in dating relationships, [i]t is important for all states to provide legal protection for minor victims of dating violence.[21]

VI. Other States' Laws

Thirty states have statutes related to the issuance of protective orders in dating relationships.[22] There are several differences in the definition of "dating relationships" (if there is a definition at all) among the various state statutes. Eighteen of the thirty states that allow for protective orders in dating relationships define a dating relationship using descriptive words such as "intimate relationship" or "intimate associations with the expectation of affection or sexual involvement."[23] Seven other states use "factors" to

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[17] *Public Policy Issues: Dating Violence-Minors' Access to Protective Orders*, National Center for Victims of Crime at http://www.ncvc.org/law/issues/dating_violence/dating_violence_main.htm.
[18] *Public Policy Issues: Dating Violence-Overview of Legislative Issues*, National Center for Victims of Crime at http://www.ncvc.org/law/issues/dating_violence/dating_violence_main.htm.
[19] *Id.*
[20] *See* Note 17.
[21] *See* Note 17.
[22] Those states are: Alabama, Alaska, California, Colorado, Hawaii, Idaho, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, West Virginia, as well as the District of Columbia, Puerto Rico and the Virgin Islands.
[23] Those states are: Alaska, California, Colorado, Illinois, Maine, Maryland, Michigan, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, Tennessee, West Virginia,

determine what a dating relationship is, including wording such as: "(1) the length of the relationship; (2) the nature of the relationship; and (3) the frequency of interaction between the parties.[24] The remaining six do not define a dating relationship; and four consider the individuals defined as family and/or household members.[25,26]

VII. Issues with SB 641

While the policy concerns that SB 641 attempts to address are important, there are limitations with its proposed language, both conceptually and as specifically drafted.

Perhaps most significantly, while SB 641 expands the number of people who would be able to petition for protective orders, by creating a new kind of order for instances of "dating violence,"[27] its applicability would still be limited to those persons who are in dating relationships. Anyone who was threatened, in a clear and significant manner, by a fellow employee, neighbor, or non-family member, would be unable to seek the relief that a protective order could provide.

Even people threatened by a romantic partner might be unable to meet the statutory requirements contemplated by SB 641. "Dating relationship" is defined in the bill as "a romantic relationship between individuals that exists or has existed for a reasonably continuous period of time but shall not include a casual acquaintanceship or ordinary fraternization in a business or social context." By this very definition, a woman who goes on one or two dates, and then begins to feel threatened by the person whom she has only casually been seeing, would be unable to apply for a "dating violence" protective order.[28]

Closely allied with this last problem is the fact that if a new protective order is created which deals only with "dating relationships," victims will be forced to testify during hearings about the details of their relationships with respondents. In family abuse protective order hearings, the jurisdictional requirements can almost always be presented without subjecting the petitioner to an extensive cross-examination; a respondent either is a former spouse, brother-in-law, etc., or is not. However, the term "dating relationship"

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as well as the District of Columbia and Puerto Rico. *See also Attachment 3*--Statutory Overview of States' Laws on Protective Orders in Dating Relationships.

[24] Those states are: Hawaii, Idaho, Massachusetts, Minnesota, Rhode Island, Vermont and Washington. *See also* Attachment 1.

[25] Those states that do not define a dating relationship: Alabama, Connecticut, New Jersey, North Dakota, Wyoming, as well as the Virgin Islands. *See also Attachment 3*.

[26] Those states that consider the individuals defined as family and/or household members: Alaska, Illinois, Maine and New Mexico. *See also* Attachment 1.

[27] Senate Bill 641, as amended in the nature of a substitute, 2002 General Assembly, Reg. Sess., (Va. 2002). *See* Attachment 2.

[28] The original version of Senate Bill 641 provided an even more explicit definition of "dating relationship," which looked, in part, at factors such as "length of relationship," "nature of relationship," and "frequency of interaction between the persons involved." Senate Bill 641, 2002 General Assembly, Reg. Sess., (Va. 2002). With this more detailed definition, one can surmise that even more persons might fall outside of the definitional requirements, and hence be unable to receive a protective order. All of the above also demonstrates the difficulty in creating a satisfactory definition of "dating relationship."

is much more of an undefined concept. If the *Code of Virginia* were to provide a very specific definition, then the chances increase that many petitioners will fall outside the exact definition, as noted above. If the term were to be given a more nebulous definition, then it allows respondents a greater opportunity to argue that they were never in a "dating relationship" with the petitioner. To present this argument, details about past dates, frequency of interaction, who was present, and a host of other potentially embarrassing details would become relevant, and could be presented to the court. In short, the focus of current protective order hearings is almost entirely centered upon the alleged conduct of the respondent, whether in the family abuse or stalking contexts. Senate Bill 641 would create hearings where, besides the alleged threatening conduct, the nature of the relationship between the parties could suddenly dominate much of the evidence and the court's time.[29]

Finally, SB 641 would allow dating violence protective order hearings to be held in either a general district or a juvenile and domestic relations district court, depending on the circumstances.[30] This lack of a definite jurisdiction could create instances where a protective order hearing is held in one court, while related criminal charges would be held in a different court. As a matter of policy, Virginia's current protective order procedures encourage judicial economy and consistency, by having their hearings held in the same court where related criminal charges would likely be heard. If the respondent is a "family or household member," as defined by Va. Code § 16.1-228, then the proper court for the protective order hearing will be the JDR court. It has jurisdiction over these hearings,[31] and will have jurisdiction over any criminal charges the respondent might be facing as a result of his conduct towards a family or household member.[32] If a respondent is not a family or household member, then a JDR court would not have jurisdiction over the case, but by the very definitions employed in the protective order statutes, a petitioner would not be seeking a family abuse protective order. The goal would be to obtain a stalking protective order, and the hearing would be held in a general district court,[33] which is the same court that would hear the upcoming criminal trial.[34]

VIII. Fiscal Impact of SB 641

If a new class of protective orders for dating relationships is created in Virginia (with most hearings being held in juvenile and domestic relations district courts), there will be a fiscal impact due to the increased numbers of protective orders being filed.

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[29] Senate Bill 641 specifically excludes "ordinary fraternization in a social context" from its definition of "dating relationship." It is difficult to see how a court would not be forced to consider evidence of the dating history of the parties, and perhaps their physical involvement, if the respondent denied having a romantic relationship, and insisted the petitioner was just a "friend in a social context."

[30] Senate Bill 641, amended in the nature of a substitute, 2002 General Assembly, Reg. Sess., (Va. 2002), proposed § 16.1-253.5(A).

[31] Va. Code §§ 16.1-253.1, 16.1-279.1.

[32] Va. Code § 16.1-241(J).

[33] Va. Code §§ 19.2-152.9, 152.10.

[34] A stalking protective order can only be sought when a stalking criminal warrant has been issued. Va. Code § 19.2-152.9. *See* discussion in **Background**, *supra.* As stalking is a misdemeanor charge, Va. Code § 18.2-60.3, the trial on that charge will be held in a general district court. Va. Code § 16.1-123.1(b).

During the 2002 General Assembly Session, the Department of Juvenile Justice completed a fiscal impact of SB 641 - Amendment in the Nature of a Substitute. This fiscal impact was not submitted to DPB for publication because the substitute was never introduced. However, it offers a general idea of what the impact could be based on New Intakes and Intake Hours. The minimum positions required would be 6.9, and the total cost (conservative estimate) would be approximately $300,000. This impact applies only to the Department of Juvenile Justice. The Supreme Court of Virginia estimates that its fiscal impact would run approximately $120,000.

IX. Conclusion and Recommendations.

The two methods that currently exist in Virginia for obtaining protective orders are sharply defined by statutory requirements. If a threatened person fails to meet the necessary definitions, i.e., is not a family or household member of the tormentor, nor is being stalked, then they are left without any means to obtain a protective order from a court. While the criminal justice process may provide some relief in the form of alternative mechanisms for obtaining court orders against a defendant, there are limitations to using criminal charges for purposes of obtaining "protective order" relief.

It would probably be good policy, therefore, to expand the availability of protective orders, so that a person facing a serious threat would not be stymied in their efforts to obtain judicial protection because of a failure to meet a jurisdictional or definitional requirement. Senate Bill 641 attempts to do this. However, because it expands protective orders to include only a small, limited class, namely people in "dating relationships," it still would leave many potential victims without the means to obtain protective orders. An additional problem with SB 641 is that its definition of "dating relationship" could lead the focus of a court hearing to shift from the alleged threatening conduct of the respondent, to a potentially embarrassing examination of the relationship between the parties. Therefore, it is the recommendation of the Crime Commission that an alternative to SB 641 be considered to remedy any inadequacies in Virginia's present protective order statutes.

Expanding the Use and Scope of Peace Bonds

The *Code of Virginia* has a little used process that operates as a crude type of "protective order." Va. Code § 19.2-20 allows any person to appear before a judge or magistrate, and make a formal complaint against another. The judicial officer is required to examine, under oath, the complainant and any witnesses, and determine under a probable cause standard[35] if the person complained of has threatened to "kill or injure another or to commit violence or injury against his person or property, or to unlawfully trespass upon his property."[36] If probable cause is found, a warrant is issued, and the

[35] Va. Code § 19.2-20.
[36] Va. Code § 19.2-19.

person complained will be brought before the judicial officer for a hearing.[37] If "good cause" is found for the complaint,[38] the person who made the threat "shall be required to give a recognizance to keep the peace for such period not to exceed one year as the court hearing the complaint may determine."[39]

Peace bonds originate from the common law, and a number of states have variations of this type of proceeding. In some states, peace bonds are actively used in a "protective order" type of role. Maryland recently updated their peace bond statutes in 1999. Their peace bond orders are available to any victim defined as "an individual against whom an act . . . is committed or alleged to have been committed," and "includes, if the victim is not an individual, the victim's agent or designee."[40] This law allows an order of protection to be extended to anyone, including those in dating relationships and businesses.

One answer to some of the limitations of Virginia's protective order statutes would be to expand and make greater use of peace bonds. However, there are some difficulties with this scheme. As currently defined, peace bond hearings are quasi-criminal, not civil, as in the case of protective orders.[41] They were originally designed, under the common law, to ensure peace was kept in a community when it appeared likely that two or more individuals were slowly escalating towards violence. From this background, peace bonds were, and still are in Virginia, a mechanism in which the Commonwealth imposes peace between two individuals, rather than a mechanism in which a threatened person can seek help from the courts. The origin of peace bonds explains why there is an emphasis on paying a recognizance, rather than allowing a judge to draft a specific order to prevent contact between parties. The limited duration of peace bonds also becomes clear—it was assumed that if no fighting had broken out after a year, tempers had sufficiently cooled to allow the money originally forfeited to be reimbursed.

Because peace bonds are only available when a person has made a "threat," they would not be available in instances when an individual has demonstrated stalking behaviors, or has implied a threat but not actually stated any intent to do harm. Also, if an individual were indigent, requiring a security would accomplish nothing, and the process would be meaningless. And, an individual could conceivable "keep the peace," yet still engage in ominous behavior, such as following a victim from a distance at all times.

Essentially, peace bonds are not an ideal candidate to act as a substitute for protective orders. They evolved to fulfill a different function, and doctrinally, their roles and objectives are markedly different. Their current limited scope would require

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[37] Va. Code § 19.2-20.
[38] Va. Code § 19.2-21
[39] Va. Code § 19.2-19. The recognizance is typically some type of security, the equivalent of a "conditional" fine. If the defendant keeps the peace for the time period specified by the court, he is reimbursed this amount. *See, generally,* Fedele v. Commonwealth, 205 Va. 551 (1964).
[40] Md. Fam. Law Code Ann. §§ 3-1504, 3-1505, 3-8A-01(v). (1999)
[41] *See* Fedele v. Commonwealth, 205 Va. 551 (1964).

extensive modification in the *Code of Virginia* if they were to be employed as protective order surrogates. While this is a possibility, the difficulties just outlined suggest that this is not the best way to proceed. Therefore, it is the recommendation of the Crime Commission that peace bonds not be adopted to act as the equivalents of protective orders.

Expanding the availability of protective orders

Another, simpler remedy to handle the problems addressed by Senate Bill 641 would be to simply extend the availability of protective orders to all persons who are facing a significant threat of injury or sexual assault from another. Several states have taken this approach and expanded protective orders to include employers and employees and businesses that are being harassed.[42] Currently in Virginia, if a person is facing such a threat from a family or household member, statutory provisions exist which allow the threatened individual to obtain a protective order.[43] As discussed above, problems arise only when the respondent is not a family or household member. In those cases, unless the respondent has engaged in actual stalking, and has had a warrant taken out against him, there is no means by which a person can obtain a protective order.

If the stalking protective order statutes were widened, so that these strict requirements did not completely prevent the issuance of protective orders in certain deserving cases, most of the problems discussed above would be alleviated. It also makes sense to modify the *Virginia Code* stalking protective order sections (19.2-159.8, 19.2-152.9, and 19.2-152.10), instead of the family abuse protective order sections. In terms of district court jurisdiction, only JDR courts have the authority to hear cases involving "family and household members,"[44] and family abuse protective order petitions.[45] Allowing JDR courts to hear cases not involving family or household members would necessitate redrafting their jurisdictional authority, and could lead to the problem, discussed above, of having a JDR court hear the protective order case, while a general district court hears the accompanying criminal case. There is a simple, logical consistency in preserving the domain of JDR courts to include only those cases involving family or household members.

Recommendation

Expanding the availability of protective orders to all individuals in the Commonwealth, under the current *Virginia Code* sections dealing with stalking protective orders, is the simplest and most comprehensive solution to the problems addressed by Senate Bill 641. It involves a minimum of new language being inserted into the *Code*, does not require any jurisdictional statutes to be modified, and would significantly increase the ability of individuals who feel threatened to obtain help from the courts.

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[42] Ca. Civ. Proc. Code § 527.8 (2001) and Me. Rev. Stat. Ann. § 5-4653 (2000).
[43] Va. Code §§ 16.1-253.1, 253.4, 16.1-279.1.
[44] Va. Code § 16.1-241
[45] Va. Code §§ 16.1-253.1, 16.1-279.1.

Accordingly, it is the recommendation of the Crime Commission that Va. Code §§ 19.2-152.8, 19.2-152.9 and 19.2-152.10 be modified in their scope to encompass trespasses, as well as assaults and other violent crimes, in addition to criminal stalking.[46]

[46] *See Attachment 4*.