

99-007

**COURTS NOT OF RECORD: JUVENILE AND DOMESTIC RELATIONS COURTS.**

**Preliminary protective order issued to protect welfare of child in any matter before court remains part of case over which court's jurisdiction has been invoked. Disposition of adult case during which court issued order to protect child from abuse or neglect does not terminate preliminary protective order.**

The Honorable Paul D. Greer  
Judge, Juvenile and Domestic Relations District Court for Washington & Smyth Counties/City of Bristol  
September 14, 1999

You ask several questions regarding the issuance of preliminary protective orders for the protection of a child under § 16.1-253(A) of the *Code of Virginia* when the court has jurisdiction in an adult criminal or civil case.

Section 16.1-253(A) authorizes the juvenile and domestic relations district court to issue a preliminary protective order for the benefit of a child in "any matter before the court." Section 16.1-253(A) permits issuance of the order "after a hearing,"<sup>1</sup> while § 16.1-253(B) permits issuance of the order "ex parte,"<sup>2</sup> with a hearing to be provided within "five business days after the issuance of the order."<sup>3</sup> You ask specifically about § 16.1-253(A), which provides, in part:

Upon the motion of any person or upon the court's own motion, the court may issue a preliminary protective order, after a hearing, if necessary to protect a child's life, health, safety or normal development pending the final determination of any matter before the court.

You ask first whether, if the court issues a preliminary protective order under § 16.1-253(A) in an adult criminal or civil case within the court's jurisdiction,<sup>4</sup> the order remains a part of the adult case or whether it constitutes an independent case. Section 16.1-260(A) provides that, subject to certain stated exceptions, "[a]ll matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition." Section 16.1-252 authorizes the court, upon petition, to issue a preliminary removal order in cases of alleged abuse or neglect of a child. In addition, § 16.1-253.1 authorizes victims of "family abuse," including children, to file a petition seeking a preliminary protective order. Section 16.1-253, however, does not require the filing of a petition. Rather, § 16.1-253(A) permits the issuance of a preliminary protective order for the protection of a child upon a "motion" made by "any person" or by the court in "any matter" already within the jurisdiction of the court.<sup>5</sup> No language in § 16.1-253 suggests that a motion for a preliminary protective order made in a matter already before the court or the issuance of the order operates to commence an independent action. It is my opinion that a preliminary protective order issued under § 16.1-253 remains a part of the case over which the court has jurisdiction when it issues the order.<sup>6</sup>

You ask also whether, because a preliminary protective order is issued under § 16.1-253(A) "pending the final determination of any matter before the court," disposition of the adult case terminates the protective order. Read alone, "pending the final determination of any matter before the court" would appear to limit the duration of a preliminary protective order issued under § 16.1-253(A) in an adult civil or criminal case to the period in which the adult case is pending final determination. It is a fundamental rule of statutory construction, however, that in ascertaining and giving effect to the intent of the legislature,<sup>7</sup> a statute is to be considered as a whole and in conjunction with other statutes bearing upon the same subject matter.<sup>8</sup>

Subsections C, D, E and G of § 16.1-253 set out the procedures for the "hearing required by this section."<sup>9</sup> Although the argument can be made that these subsections apply only to the hearing required under subsection B following the court's *ex parte* issuance of a preliminary protective order, subsection A also requires a hearing before issuance of the order. Thus, the language "hearing required by this section"<sup>10</sup> must be read to encompass both subsections A and B.

Section 16.1-253(C) requires twenty-four hour notice prior to the hearing to the parents, legal custodian of the child, or any family or household member "to whom the protective order may be directed." Section 16.1-253(D) requires that "[a]ll parties to the hearing ... be informed of their right to counsel." Section 16.1-253(E) provides that any person to whom notice was given has the right to examine witnesses and present evidence at the hearing. Finally, § 16.1-253(G) provides:

If at the preliminary protective order hearing held pursuant to this section the court makes a finding of abuse or neglect and a preliminary protective order is issued, a dispositional hearing shall be held pursuant to § 16.1-278.2. The dispositional hearing shall be scheduled at the time of the hearing pursuant to this section, and shall be held within seventy-five days of this hearing. ... All parties present at the hearing shall be given notice of the date and time scheduled for the dispositional hearing; parties who are not present shall be summoned to appear as provided in § 16.1-263.

Reading § 16.1-253 as a whole and in conjunction with the other statutes relating to the court's authority to protect the welfare of a child, it is my opinion that, should the court at the hearing held under § 16.1-253(A) find abuse or neglect, the preliminary protective order does not terminate upon disposition of the adult case at which the order was issued. Rather, the court is to schedule a dispositional hearing pursuant to § 16.1-278.2.<sup>11</sup> Section 16.1-278.2 details the procedure for the dispositional hearing and the orders of disposition that the court may make to protect the welfare of the child. Section 16.1-278.2(C) expressly provides that "[a]ny preliminary protective orders entered on behalf of the child shall be reviewed at the dispositional hearing and may be incorporated, as appropriate, in the dispositional order."<sup>12</sup>

<sup>1</sup>The order may be issued under § 16.1-253(A) "if necessary to protect a child's life, health, safety or normal development."

<sup>2</sup>"*Ex parte*" means "done for, in behalf of, or on the application of, one party only." Black's Law Dictionary (6<sup>th</sup> ed. (1990)).

<sup>3</sup>The order may be issued under § 16.1-253(B) upon evidence establishing "that the child would be subjected to an imminent threat to life or health to the extent that delay for the provision of an adversary hearing would be likely to result in serious or irremediable injury to the child's life or health."

<sup>4</sup>Section 16.1-241 sets out the "cases, matters and proceedings" within the jurisdiction of the juvenile and domestic relations district courts.

<sup>5</sup>I assume that the person against whom the order is issued is a party in the matter before the court or is otherwise within the jurisdiction of the court. See § 16.1-253(H) (order may not issue under statute "against a person over whom the court does not have jurisdiction"); see *also* § 16.1-253(C) (notice of hearing is to be provided person "to whom the protective order may be directed").

<sup>6</sup>Because I conclude that the preliminary protective order does not constitute an independent case, it is unnecessary to address your second question regarding the presentation of evidence on appeal to the circuit court when the juvenile and domestic relations district court issues the order upon its own motion.

<sup>7</sup>See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

<sup>8</sup>See *Gallagher v. Commonwealth*, 205 Va. 666, 139 S.E.2d 37 (1964) (word "operates," as defined in motor vehicle laws, is not limited to movement of vehicles, in order to convict defendant under criminal laws of driving or operating motor vehicle while intoxicated); *Prillaman v. Commonwealth*, 199 Va. 401, 406, 100 S.E.2d 4, 7 (1957) (provisions in statute which are omitted in another statute relating to same subject are applicable to proceeding under other statute, when not inconsistent with its purposes); see also *Op. Va. Att'y Gen.*: 1998 at 117, 118-19; 1993 at 173, 174.

<sup>9</sup>Section 16.1-253(C).

<sup>10</sup>*Id.*

<sup>11</sup>Section 16.1-278.2(A) states that the dispositional hearing is to be held "[w]ithin seventy-five days of ... a hearing on a preliminary protective order held pursuant to § 16.1-253." Under certain circumstances, § 16.1-253(F) requires the court to hold an adjudicatory hearing in addition to the dispositional hearing.

<sup>12</sup>This conclusion also is consistent with the liberal construction mandate of § 16.1-227. Section 16.1-227 states that the Juvenile and Domestic Relations District Court Law is to be "construed liberally and as remedial in character, and the powers hereby conferred are intended to be general to effect the beneficial purposes herein set forth." Section 16.1-253 evidences a legislative intent to establish a mechanism enabling the court to consider the safety and health of a child in connection with any matter in which the court's jurisdiction has been invoked. To conclude that the legislature intended to permit the court to issue an order protecting a child from abuse or neglect only for the duration of the matter before the court would not in my view best effect the beneficial purpose of the statute.