

1-1-2009

## Entry and Service of Protective Orders in Virginia: Are You Really Protected

Susheela Varky

Follow this and additional works at: <http://scholarship.richmond.edu/pilr>

 Part of the [Privacy Law Commons](#), and the [State and Local Government Law Commons](#)

---

### Recommended Citation

Susheela Varky, *Entry and Service of Protective Orders in Virginia: Are You Really Protected*, 12 RICH. J.L. & PUB. INT. 333 (2008).  
Available at: <http://scholarship.richmond.edu/pilr/vol12/iss4/9>

This Article is brought to you for free and open access by the Law School Journals at UR Scholarship Repository. It has been accepted for inclusion in Richmond Public Interest Law Review by an authorized administrator of UR Scholarship Repository. For more information, please contact [scholarshiprepository@richmond.edu](mailto:scholarshiprepository@richmond.edu).

## THE ENTRY AND SERVICE OF PROTECTIVE ORDERS IN VIRGINIA:

### ARE YOU REALLY PROTECTED?

*Susheela Varky*\*

According to the Virginia Department of State Police, there has been a legislative effort in 2008 and 2009 over the past two years to ensure that essential data from protective orders<sup>1</sup> is entered into the Virginia Criminal Information Network (“VCIN”) immediately upon the order’s issuance. While data entry may seem like a dull topic, the following story highlights the dire significance of this seemingly mundane task.

---

\* B.A., 1986, Tufts University, Medford, MA; J.D., 1993, Washington College of Law at the American University, Washington, D.C. The author would like to thank her colleagues at Virginia Poverty Law Center and everyone with whom she has worked over the past several years to improve protective order policies and procedures throughout Virginia. Special thanks go to M. Jill Humphreys, formerly of the Virginia Department of State Police, Ruth Micklem, Virginia Sexual and Domestic Violence Action Alliance, and Lt. Patrick D. Fagan, III, Virginia Department of State Police, for assistance in developing and reviewing drafts of this article and for offering invaluable suggestions.

1. Throughout this article, unless otherwise noted, the term “protective order” refers to a domestic violence protective order or Family Abuse Protective Order as defined in section 16.1-279.1 of the Code of Virginia. This is a type of civil protective order where a Virginia Juvenile and Domestic Relations District Court judge finds that “family abuse” or an “act involving violence, force, or threat including, but not limited to, any forceful detention, which results in bodily injury or places one in reasonable apprehension of bodily injury and which is committed by a person against such person’s family or household member” has occurred. VA. CODE ANN. § 16.1-228 (Cum. Supp. 2008). Family Abuse Protective Orders are often referred to as “full” or “permanent” protective orders and may be issued for up to two years. *Id.* § 16.1-279.1(B). The 2009 legislation refers to the Family Abuse Protective Order as defined in section 16.1-279.1 of the Code of Virginia as well as the following types of protective orders: Family Abuse Emergency Protective Orders (granted under section 16.1-253.4), Family Abuse Preliminary Protective Orders (granted under section 16.1-253.1), Stalking/Acts of Violence Emergency Protective Orders (granted under section 19.2-152.8), Stalking/Acts of Violence Preliminary Protective Orders (granted under section 19.2-152.9), Stalking/Acts of Violence Protective Orders (granted under section 19.2-152.10), and Child Protective Orders (granted under section 16.1-253). S.B. 1439, Va. Gen. Assembly (Reg. Sess. 2009), §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, and 19.2-152.10 (enacted as Chapter 732, 2009 Va. Acts \_\_\_).

I. THE SIGNIFICANCE OF ACCURATE PROTECTIVE ORDER DATA: THE  
SPICKNALL MATTER IN MARYLAND

In December 1998, Lisa Spicknall obtained a protective order<sup>2</sup> against her then-husband, Richard Wayne Spicknall, II.<sup>3</sup> Provisions of the order required Mr. Spicknall to have no contact with Ms. Spicknall and to stay away from her, but it allowed the parties to share custody of their two children, Richie, age two, and Destiny, age three.<sup>4</sup> In early September 1999, Mr. Spicknall picked up Richie and Destiny from the Anne Arundel County home of Ms. Spicknall's parents to take them to Ocean City, Maryland, a popular beach town.<sup>5</sup> On the morning of September 9, 1999, Maryland State Police found Richie dead from a gunshot wound inside Mr. Spicknall's Jeep.<sup>6</sup> Found nine hours after being shot, Destiny was struggling to breathe.<sup>7</sup> She died the next day in the hospital.<sup>8</sup>

Mr. Spicknall first claimed a carjacker attacked him and his children.<sup>9</sup> Later, he admitted to shooting both of his children while they were strapped in their car seats.<sup>10</sup> In the middle of his November 2000 trial, Mr. Spicknall pled guilty to two counts of first-degree murder and was sentenced to two consecutive life terms plus twenty years in prison.<sup>11</sup> On December 9, 2006, at 7:40 p.m., Mr. Spicknall was found dead in a shower with a rag or towel stuffed in his mouth at Jessup Correctional Institution.<sup>12</sup>

Under Maryland, Virginia, and federal law, it is unlawful for a person against whom a protective order has been issued to purchase a firearm.<sup>13</sup> Yet on September 2, 1999, several months after the issuance of the Maryland protective order that made him ineligible to purchase a

---

2. MD. CODE ANN., FAM. LAW § 4-506 (LexisNexis 2006). Ms. Spicknall obtained a protective order equivalent to Virginia's Family Abuse Protective Order. *Compare id.*, with VA. CODE ANN. § 16.1-279.1 (Cum. Supp. 2008).

3. Brian Shane, *Restraining Order Loophole Enrages Committee Members*, CAP. NEWS SERVICE, Nov. 30, 1999.

4. *Dateline* (NBC television broadcast Sept. 5, 2001).

5. Ruben Castaneda, *Mom Turns Own Tragedy into Career of Advocacy*, WASH. POST, July 5, 2006, at B1.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. Greg Garland & Chris Guy, *Child Killer Dies in Prison*, BALT. SUN (Md.), Dec. 12, 2006, at 1A.

11. *Id.*

12. *Id.*

13. 18 U.S.C. § 922(g)(8) (2006); MD. CODE ANN., FAM. LAW § 4-506 (LexisNexis 2006); VA. CODE ANN. 16.1-279.1(c) (Cum. Supp. 2008).

firearm, Mr. Spicknall walked out of a pawnshop in College Park, Maryland as the new owner of a nine millimeter handgun.<sup>14</sup> He used the very same gun to kill his children just days later.<sup>15</sup>

How could this occur? A Howard County Sheriff's Office clerk, conducting a routine database audit in January 1999, mistakenly deleted the Spicknall protective order from the Maryland Interagency Law Enforcement System ("MILES"), a criminal database that is one of the sources cross-checked whenever a buyer attempts to purchase a weapon in Maryland.<sup>16</sup> The clerk misconstrued the term "consent" on the Spicknall protective order to mean that the parties consented to the entry of the protective order.<sup>17</sup> The Spicknalls had consented to the protective order concerning the sharing of custody of their children, but this did not affect the prohibition against the purchase of a firearm.<sup>18</sup> The order still required Mr. Spicknall to stay away from and have no contact with Ms. Spicknall for one year, thereby making it the type of protective order that needed to remain in MILES until its expiration.<sup>19</sup> After the clerk deleted the protective order from MILES, the cross-check did not reveal that he was ineligible to purchase a firearm.<sup>20</sup> Therefore, when Mr. Spicknall went to the pawnshop in College Park, Maryland, he was able to purchase his murder weapon.<sup>21</sup>

The Spicknall matter drew widespread media attention, not only for the nature of the crime, but because of the failings of the MILES process in preventing Mr. Spicknall from purchasing a gun.<sup>22</sup> In a civil action for the wrongful death of her children, Lisa Spicknall sued the Maryland State Police, the Howard County Sheriff's Office, the Howard County Circuit Court, and other state actors responsible for improperly deleting her protective order.<sup>23</sup>

Investigations led to the discovery of hundreds and even thousands of

---

14. *See* Shane, *supra* note 3.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *See* Dateline, *supra* note 4; *see also infra* notes 32–37 and accompanying text (discussing types of protective orders that prohibit respondents from purchasing firearms under Virginia law and from purchasing or possessing firearms or ammunition under federal law).

20. *See* Dateline, *supra* note 4.

21. *Id.*

22. *See* Garland & Guy, *supra* note 10; *see also* Dateline, *supra* note 4.

23. *Spicknall v. Maryland*, 42 Fed. App'x 667 (4th Cir. 2002) (affirming the district court's dismissal of Ms. Spicknall's 42 U.S.C. §§ 1983 and 1985 action).

protective orders that should have been in the MILES system but were not included.<sup>24</sup> The Maryland State Police audited MILES and determined that five counties did not have any protective orders entered, one county had just two entered, and the Baltimore City Police Department, which was responsible for handling more than one thousand protective orders, entered only twenty-one.<sup>25</sup> The Maryland State Police applied for and received a grant to conduct training sessions at every law enforcement agency in Maryland responsible for entering protective orders.<sup>26</sup> While audits indicate that there are few clerical errors in the MILES database, the nearly one million dollars in grant funding will help all jurisdictions further improve the accuracy and quality of their data entry.<sup>27</sup>

## II. IMPROVING THE ACCURACY OF PROTECTIVE ORDER DATA IN VIRGINIA

The Spicknall scenario, in which human error left technological systems designed to improve communication and accuracy ineffective, could play out anywhere, including Virginia. Virginia courts issue thousands of protective orders every year.<sup>28</sup> All of these protective

24. See 2 KARL S. ARO, DEP'T OF LEGISLATIVE SERVS., MD. GEN. ASSEMBLY, THE 90 DAY REPORT: A REVIEW OF THE 2000 LEGISLATIVE SESSION, at Part F, HB 101 (2000), <http://mlis.state.md.us/2001rs/90-day-report/VolumeII/PART-F.htm> (last visited Oct. 20, 2009); *Dateline*, *supra* note 4; see also Laura Barnhardt, *Grants to Improve Md. Law Enforcement Database Announced; Nearly \$1 Million Set to Help Ensure Entry of Protective Orders; Spicknall Case the Impetus*, BALT. SUN (Md.), Nov. 17, 2000, at 2B.

25. Barnhardt, *supra* note 24.

26. See *id.* (noting that Baltimore City, Maryland's most populous jurisdiction, received two grants totaling \$271,565 to acquire more personnel and computer equipment to upgrade the city's system).

27. See *id.*

28. E-mail from M. Jill Humphreys, Senior Virginia Criminal Information Network Analyst, Virginia State Police: Criminal Justice Information Services Division, to Susheela Varky, Staff Attorney, Virginia Poverty Law Center (Feb. 9, 2009, 13:57 EST) (on file with author) (regarding December 31, 2008 audits that showed 858 active Emergency Protective Orders (consisting of Family Abuse Emergency Protective Orders granted under section 16.1-253.4 and Stalking/Acts of Violence Emergency Protective Orders granted under section 19.2-152.8), 2459 Preliminary Protective Orders (consisting of Child Preliminary Protective Orders granted under section 16.1-253, Family Abuse Preliminary Protective Orders granted under section 16.1-253.1, and Stalking/Acts of Violence Preliminary Protective Orders granted under section 19.2-152.9), and 19,890 Protective Orders (consisting of Family Abuse Protective Orders granted under section 16.1-279.1 and Stalking/Acts of Violence Protective Orders granted under section 19.2-152.10)); see also GOVERNOR'S COMM'N ON SEXUAL VIOLENCE, REPORT AND RECOMMENDATIONS 15-16 (2007), <http://www.publicsafety.virginia.gov/Initiatives/SexViolence/CSV-Final-Report.pdf> (last visited Mar. 23, 2009) (noting that twelve thousand protective orders are issued annually); VA. DEP'T OF STATE POLICE, 2007 FACTS AND FIGURES 13, available at [http://www.vsp.state.va.us/downloads/2007\\_Facts-Figures.pdf](http://www.vsp.state.va.us/downloads/2007_Facts-Figures.pdf) (last visited Mar. 23, 2009) (indicating that agencies entered 12,562 Emergency Protective Orders, 1,715 Preliminary Protective Orders, and 359 Protective Orders in 2007).

orders are supposed to be entered into Virginia's version of MILES, the Virginia Criminal Information Network ("VCIN").<sup>29</sup> Audits conducted by the Virginia Department of State Police across the Commonwealth revealed that numerous jurisdictions had not entered all issued protective orders into VCIN.<sup>30</sup> Additionally, jurisdictions did not routinely forward protective orders to primary law enforcement agencies for timely entry into VCIN.<sup>31</sup>

#### A. Virginia Firearm Prohibitions

A key element in preventing prohibited parties, such as Mr. Spicknall, from purchasing guns is the connection between protective orders and firearms. In Virginia, a respondent in a protective order is prohibited from purchasing or transporting a firearm and must relinquish his concealed weapon permit:

It shall be *unlawful for any person who is subject to (i) a protective order* entered pursuant to [sections] 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, or [section] 19.2-152.10; (ii) an order issued pursuant to subsection B of [section] 20-103; (iii) an order entered pursuant to subsection D of [section] 18.2-60.3; or (iv) an order issued by a tribunal of another state, the United States or any of its territories,

---

29. See OFFICE OF THE EXECUTIVE SEC'Y, SUPREME COURT OF VA., JUVENILE & DOMESTIC RELATIONS DISTRICT COURT MANUAL 6-9 [hereinafter JDR COURT MANUAL], available at [http://www.courts.state.va.us/courts/jdr/jdrman/toc\\_jdr\\_manual.pdf](http://www.courts.state.va.us/courts/jdr/jdrman/toc_jdr_manual.pdf) (regarding protective orders issued under section 16.1-279.1 of the Code of Virginia); see also M. JILL HUMPHREYS, PROTECTIVE ORDERS MESSENGER, NEW UPGRADES SINCE JANUARY 2008, HOT FILES (on file with author).

30. The Virginia Department of State Police is responsible for auditing the law enforcement agencies in Virginia that participate in the VCIN System, which contains the Protective Order Registry. See VA. CODE ANN. § 52-45 (Repl. Vol. 2005) (requiring the establishment of the Registry, which is accessible to agencies in Virginia and nationwide). The Registry database contains essential data about protective orders for service and enforcement purposes and is one of the databases that is cross-checked to prevent prohibited parties, such as respondents in protective order matters, from purchasing guns. See VA. CODE ANN. § 9.1-127 (Repl. Vol. 2006) (establishing Virginia's statewide criminal justice information system and enumerating the corresponding duties of the Virginia Department of State Police). The purpose of the Registry is to "assist the efforts of law-enforcement agencies to protect their communities and their citizens. The Department of State Police shall make Registry information available, upon request, to criminal justice agencies, including local law-enforcement agencies, through the [VCIN]." See VA. CODE ANN. § 19.2-387.1 (Repl. Vol. 2008).

31. The author's discussions and work with various state and local agencies since 2006 reflect anecdotal evidence that some courts in Virginia had not been entering or forwarding *any* Child Protective Orders (issued to "protect a child's life, health, safety or normal development pending the final determination of any matter before the court" under section 16.1-253 of the Code of Virginia) due to the misconception that protective orders where children are the protected parties should remain confidential and therefore, not be released for entry into VCIN.

possessions or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to those cited in clauses (i), (ii), or (iii) *to purchase or transport any firearm while the order is in effect*. Any person with a concealed handgun permit shall be prohibited from carrying any concealed firearm, and *shall surrender his permit to the court entering the order, for the duration of any protective order referred to herein*. A violation of this section is a Class 1 misdemeanor.<sup>32</sup>

#### B. Federal Firearms Prohibitions

Under federal law, a respondent in a “qualifying protective order”<sup>33</sup> is not only prohibited from purchasing or transporting a firearm, he is also prohibited from shipping, receiving, or possessing a firearm or ammunition as follows:

(g) It shall be unlawful for any person—

...

(8) who is subject to a court order that—

(A) *was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;*

(B) *restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and*

(C)(i) *includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or*

(ii) *by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be*

32. VA. CODE ANN. § 18.2-308.1:4 (Cum. Supp. 2008) (emphasis added).

33. See *infra* notes 32–37 and accompanying text (noting differences between Virginia and federal firearm prohibitions).

*expected to cause bodily injury . . .*

. . .

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or

ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.<sup>34</sup>

### C. The Brady Indicator

Along with the above due process, restriction of future conduct, and credible threat or physical force considerations, if the respondent's protective order also meets a fourth criterion—namely, that respondent is an intimate partner of the petitioner in the protective order—the respondent is subject to a qualifying protective order that carries federal firearm prohibitions and penalties.<sup>35</sup> These four elements are also known as the “Brady Indicator.”<sup>36</sup> For purposes of this discussion, when the Brady Indicator is set and entered in VCIN,<sup>37</sup> the respondent is

34. 18 U.S.C. § 922(g)(8) (2006) (emphasis added). *See infra* notes 32–37 and accompanying text (noting differences between Virginia and federal firearm prohibitions).

35. The term “intimate partner” means the petitioner in the protective order is the spouse of respondent, a former spouse of the respondent, an individual who has a child in common with the respondent or an individual who cohabitates or has cohabited with the respondent. *See* 18 U.S.C. § 921(a)(32) (2006).

36. In 1981, in an assassination attempt by shooter John Hinckley, Jr. on former President Ronald Reagan, President Reagan's press secretary, James Brady, suffered a serious head wound that left him paralyzed. Corky Siemaszko, *Brady Better After Attack*, DAILY NEWS (N.Y.), Nov. 30, 1995, at 17. President William J. Clinton signed the Brady Handgun Violence Prevention Act of 1993, which amended the Gun Control Act of 1968, making it unlawful for subjects of qualifying protective orders to ship, transport, possess or receive firearms. *See* 18 U.S.C. §§ 921–922 (2006); *see also* Brady Campaign to Reduce Gun Violence, History of the Brady Campaign, <http://www.bradycampaign.org/about/history> (last visited Mar. 24, 2009). Mandated by the Brady law, on November 30, 1998, the FBI launched the National Instant Criminal Background Check System (“NICS”), which is used by Federal Firearms Licensees (“FFL”) to determine instantly whether a prospective buyer is eligible to buy firearms or explosives. *See* Federal Bureau of Investigations, NICS: The National Instant Criminal Background Check System, <http://www.fbi.gov/hq/cjisd/nics.htm> (last visited Mar. 24, 2009). Before completing the sale, cashiers run a check to the FBI or to other designated agencies to ensure that no customer has a criminal record or is otherwise ineligible to make a firearm or ammunition purchase. *See id.* Nearly one hundred million such checks have been made in the last decade, leading to some seven hundred thousand denials. *See id.*

37. The Brady indicator is set by indicating two of three choices. A “Y” means “Yes, the respondent is Brady-disqualified,” or “No, the respondent cannot receive or possess a firearm.” An “N” in that field means “No, the respondent is not Brady-disqualified,” or “Yes, the respondent may receive or



prohibited under federal law from possessing or purchasing a firearm.

#### D. Full Faith and Credit

Law enforcement should not rely on the respondent's willingness to abide by the law to prevent him from purchasing a gun.<sup>38</sup> The accuracy of the VCIN entry is invaluable in prohibiting unqualified petitioners from purchasing guns. If the entry of essential protective order data by the clerk into the Court Management System ("CMS")-VCIN interface is accurate, it is sufficient to meet the criteria for immediate entry into the VCIN System.<sup>39</sup> This is so important because accurate data entry ensures that essential data from the protective order is not only entered into VCIN in a timely manner, but that the information also becomes immediately available to other law enforcement agencies.

Once data is accurately entered into VCIN, the protective order information instantly populates the Federal Bureau of Investigation ("FBI") National Criminal Information Center ("NCIC") Protective Order File ("POF").<sup>40</sup> The NCIC POF gives criminal justice agencies around the country immediate notification of the existence of a protection order.<sup>41</sup> The NCIC POF is available to all federal, state, and local agencies—eighteen thousand law enforcement agencies nationwide—as well as the Virginia Firearms Transaction Center and FBI National Instant Background Check System ("NICS").<sup>42</sup> Each of these entities performs firearms background checks in the Commonwealth and nationally through the FBI.<sup>43</sup> According to the NCIC, as of January 31, 2007, 24,557 persons nationwide have not been able to purchase

---

possess a firearm." The third option is "U" for "Unknown" if it cannot be determined whether the protective order is a qualifying protective order, i.e., that respondent is prohibited from shipping, transporting, possessing or receiving a firearm. HARRY E. CARLILE, JR., A MULTIDISCIPLINARY APPROACH TO THE NCIC PROTECTION ORDER FILE ("POF") 11-12 (2007). Based on the author's work and discussions with members of the Virginia Partnership to Encourage Arrest and Enforcement of Protection Orders ("GEAP") partnership, law enforcement agents responsible for VCIN entry and verification are discouraged from entering or leaving a "U" in VCIN's Brady indicator field.

38. See *supra* note 24 and accompanying text.

39. Interview with Lieutenant Patrick D. Fagan, III, VCIN Program Manager, Assistant Div. Commander, Criminal Justice Info. Servs. Div., Va. Dep't of State Police (Mar. 24, 2009).

40. The NCIC is a national database of criminal justice information operated by the FBI, which includes the POF and is available to federal, state, and local law enforcement and other criminal justice agencies twenty-four hours a day, 365 days a year. See National Crime Information Center (NCIC), Criminal Justice Information Services (CJIS) Division, <http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm> (last visited Mar. 23, 2009) [hereinafter NCIC].

41. See CARLILE, *supra* note 37, at 7.

42. See NCIC, *supra* note 40.

43. *Id.*

firearms because their status as respondents in domestic violence protective orders prevented the gun purchases from being completed.<sup>44</sup>

When an order is issued in a Virginia court and entered into VCIN, any law enforcement agent in any part of the country can review NCIC and verify the existence and provisions of that Virginia protective order. If the Spicknall protective order had remained in MILES, it would have populated NCIC and been enforceable anywhere in the country. NCIC supports the enforcement of a protective order beyond the parameters of the state of issue. In other words, it is a tool to ensure that any qualifying “protection order issued that is consistent with subsection (b) of this section by the court of one [s]tate . . . shall be accorded full faith and credit by the court of another state... and enforced . . . as if it were the order of the enforcing [s]tate . . . .”<sup>45</sup>

Only qualifying protective orders “consistent with subsection (b),” however, receive such full faith and credit.<sup>46</sup> These are protective orders where:

(1) such court has *jurisdiction over the parties and matter* under the law of such [s]tate . . . ; and

(2) *reasonable notice and opportunity to be heard* is given to against whom the order is sought sufficient to protect that person’s *right to due process*. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by [s]tate . . . law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent’s due process rights.<sup>47</sup>

In other words, a protective order qualifies for full faith and credit if the court had jurisdiction over the parties (e.g., a Juvenile and Domestic Relations District Court has jurisdiction over a protective order matter where the respondent is a family or household member of the petitioner and is found to have committed family abuse against the petitioner) and the respondent’s due process rights are not infringed (i.e., the respondent was served with a copy of the preliminary protective order (“PPO”) and notice of the protective order hearing, therefore being

---

44. *Id.*

45. 18 U.S.C. § 2265(a) (2006).

46. *Id.*

47. 18 U.S.C. § 2265(b) (2006) (emphasis added).

afforded reasonable notice and opportunity to be heard).<sup>48</sup>

#### E. The VCIN Entry Process

VCIN and NCIC can only prevent prohibited parties from purchasing guns *if* pertinent information is entered into VCIN. It is therefore helpful to understand how courts and law enforcement agencies capture and communicate protective order data once the order is issued.

After a court issues a protective order,<sup>49</sup> a court clerk is responsible for entering essential data from it into the court's CMS.<sup>50</sup> Then, the clerk must complete a separate CMS data entry screen that interfaces with VCIN and electronically transfers data to it.<sup>51</sup> The essential data that must be transferred includes:

- the type of protective order (i.e., whether the requisite “family or household member” relationship exists between the petitioner and the respondent);<sup>52</sup>
- the originating agency number (“ORI”);<sup>53</sup>
- the court case number;<sup>54</sup>
- the respondent’s “identifying information,”<sup>55</sup> including the respondent’s name, race, sex, and one of the following “numeric identifiers:” the respondent’s date of birth, social security, driver’s license, vehicle registration, FBI or

48. See 18 U.S.C. § 2265(b); *cf.* VA. CODE ANN. § 16.1-228 (Cum. Supp. 2008) (establishing Virginia’s Juvenile and Domestic Relations Courts).

49. Family Abuse Protective Orders, which last for up to two years, are usually issued by Juvenile and Domestic Relations District Court judges. See VA. CODE ANN. § 16.1-279.1 (Cum. Supp. 2008). Virginia law allows for “de novo” appeals at the Circuit Court level, so some Family Abuse Protective Orders are heard in the Circuit Court. See *id.* § 16.1-296. Additionally, the Circuit Court may issue a certain type of *pendente lite* protective order during divorce proceedings: “[U]pon a showing by a party of reasonable apprehension of physical harm to that party by such party’s family or household member as that term is defined in [section] 16.1-228, and consistent with rules of the Supreme Court of Virginia, the court may enter an order excluding that party’s family or household member from the jointly owned or jointly rented family dwelling.” See VA. CODE ANN. § 20-103(B) (Repl. Vol. 2008).

50. See JDR Court Manual, *supra* note 29, at 6-1 to 6-9.

51. See *id.* at 6-9 to 6-10.

52. See HUMPHREYS, *supra* note 29, at Slide 5; see also VA. CODE ANN. § 16.1-228 (Cum. Supp. 2008).

53. See HUMPHREYS, *supra* note 29, at Slides 5; see also NCIC 2000 PROTECTION ORDER FILE 14 (on file with author).

54. See HUMPHREYS, *supra* note 29, at Slides 5–6.

55. See VA. CODE ANN. § 16.1-279.1(B) (Cum. Supp. 2008).

miscellaneous number;<sup>56</sup>

- the issuance and expiration dates of the protective order;<sup>57</sup>
- the protective order conditions (i.e., provisions such as “the respondent must refrain from committing family abuse against the petitioner” or “the respondent must stay at least [one hundred] feet away from the petitioner’s home or workplace”);<sup>58</sup>
- the name, race, sex, and date of birth (if known) of the petitioner and any other protected parties (such as children);<sup>59</sup>
- confirmation that the respondent was served with the PPO;<sup>60</sup>
- an indication of whether the respondent was served in court with the protective order ;<sup>61</sup> and
- the setting of the Brady indicator.<sup>62</sup>

Once the clerk has completed the CMS interface with VCIN, he is also responsible for sending a copy of the protective order to the “appropriate law enforcement agency for their review and verification of entry into VCIN.”<sup>63</sup> The system has checks and balances in place requiring the clerk to not only provide the essential data from the protective order electronically but also send a paper copy of the protective order to the law enforcement agency responsible for verifying the entry of the PO in VCIN.<sup>64</sup> When that law enforcement agency employee receives notice that a clerk entered an electronic file into VCIN, via the CMS-VCIN electronic interface, he knows to expect a paper copy of the protective order. Then, with paper copy in hand,

---

56. See CARLILE, *supra* note 37, at 13; NCIC 2000 PROTECTION ORDER FILE, *supra* note 53, at 20–21.

57. See CARLILE, *supra* note 37.

58. *Id.*

59. See S.B. 1439, Va. Gen. Assembly (Reg. Sess. 2009), ¶ B, § 16.1-279.1 (enacted as Act of Mar. 30, 2009, ch. 732, 2009 Va. Acts \_\_\_\_).

60. In most Virginia Juvenile and Domestic Relations District Courts, a Family Abuse PPO, which usually lasts no more than fifteen days, is issued and served on the respondent before the hearing for the Family Abuse Protective Order that may be issued for up to two years; notice of the Protective Order hearing accompanies service of the Preliminary Protective Order. See VA. CODE ANN. §§ 16.1-253.1, 16.1-279.1 (Cum. Supp. 2008).

61. See JDR Court Manual, *supra* note 29, at 6–9.

62. See CARLILE, *supra* note 37, at 13; HUMPHREYS, *supra* note 29, at Slide 6; NCIC 2000 PROTECTION ORDER FILE, *supra* note 53, at 21; see also *supra* notes 35–37 and accompanying text.

63. JDR Court Manual, *supra* note 29, at 6–9.

64. *Id.*

he verifies, completes, and corrects the protective order entry.<sup>65</sup> The paper copy of the protective order serves as a source document for the VCIN Protective Order entry.

As of February 2008, VCIN has many data fields that CMS does not, where optional data may be stored. The law enforcement agent responsible for verifying protective order information in VCIN may enter additional information, including whether the protected person is granted exclusive possession of the home, details of the locations or places from which the respondent is prohibited (such as the petitioner's home), and most significantly for the safety of law enforcement agents as well as protected parties, whether the respondent is prohibited from purchasing a weapon.<sup>66</sup>

#### F. VCIN Data Issues and the GEAP Response

Problems arise when clerks do not transfer protective order data electronically through the CMS-VCIN interface or do not send paper copies of protective orders to the local law enforcement agency responsible for verification and entry of the data. They also exist or are exacerbated if law enforcement officers responsible for entering and verifying VCIN data fail to do so in a timely manner.

A collaborative, statewide effort to address these and other concerns about protective orders began in late 2005 when the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program ("GEAP"), administered by the federal Office on Violence Against Women, awarded a \$1.26 million competitive two-year grant to Virginia, permitting the formation of the Virginia Partnership to Encourage Arrest and Enforcement of Protection Orders.<sup>67</sup> The

65. VA. DEP'T OF STATE POLICE CRIMINAL JUSTICE INFO. SERVS., GRANT TO ENCOURAGE ARREST AND ENFORCEMENT OF PROTECTION ORDERS #06A5117-OT-05, TOOLS FOR LAW ENFORCEMENT (on file with author) (describing the many tools available to law enforcement agents responsible for VCIN entry to find further information on respondents).

66. This upgrade provided more searchable fields and allows law enforcement agencies to gain immediate access to all of their protective order entries in one report. *See* VA. DEP'T OF STATE POLICE, 13 CRIMINAL JUSTICE INFORMATION SERVICES (CJIS) DIVISION NEWSLETTER 12 (Jan. 2008), available at [http://www.vsp.state.va.us/downloads/CJIS\\_Division\\_Newsletter\\_January\\_2008.pdf](http://www.vsp.state.va.us/downloads/CJIS_Division_Newsletter_January_2008.pdf). One key function of the upgrade relates to law enforcement data queries during their encounter with a protected party. *See id.* Before the upgrade, a law enforcement officer could not search through VCIN using the names of protected parties. *See id.* Now, if enough identifying data about a protected party is listed in the VCIN record, when a law enforcement officer queries the name and date of birth of any protected party in the protective order entry, said query results in a name match. *See id.*; *see also* VA DEP'T OF STATE POLICE *supra* note 28; HUMPHREYS, *supra* note 29, at Slides 5–6.

67. *See* ROBERT F. McDONNELL, VA. OFFICE OF THE ATTORNEY GEN., 2008 ANNUAL REPORT: DOMESTIC AND SEXUAL VIOLENCE IN VIRGINIA 27 (2008), available at <http://www.oag>.

Virginia GEAP project includes six state agencies, one of which is nonprofit: the Office of the Attorney General, the Department of Criminal Justice Services, the Virginia Department of State Police, the Office of the Executive Secretary of the Supreme Court of Virginia, the Office of the Chief Medical Examiner, and the Virginia Sexual and Domestic Violence Action Alliance.<sup>68</sup> These partners provide intense technical assistance on a statewide and local level to improve access to and enforcement of protective orders.<sup>69</sup>

As part of its GEAP-related activities, the Virginia Department of State Police focuses on reducing the rate of incorrect protective order entries in VCIN through training, improving communication among the “agencies” that issue protective orders (i.e., courts) and the law enforcement entities responsible for verifying and correcting protective order data and for conducting audits of VCIN.<sup>70</sup> Virginia GEAP partners, especially those from the Virginia Department of State Police and the Office of the Executive Secretary of the Supreme Court of Virginia, review the process of entering protective orders into VCIN with local personnel responsible for the entry.<sup>71</sup>

During the first year of the Virginia GEAP project, approximately two thousand protective orders had not been entered.<sup>72</sup> When the project began, more than fifty percent of all protective orders had not been served.<sup>73</sup> In the fourth year of the project, that number has been reduced to less than three percent of the overall protective orders in

---

state.va.us/KEY\_ISSUES/DOMESTIC\_VIOLENCE/08\_AttyGeneral\_AnnualReport.pdf.

68. *Id.*

69. *Id.*

70. *See* VA. CODE. ANN. § 16.1-279.1(B), (J) (Cum. Supp. 2008). From 2005–2007, the author’s work and discussions with members of the GEAP partnership revealed a sample VCIN error rate of greater than seventy-five percent in some jurisdictions. Errors included data quality of entries, data quality on protective order forms (such as incomplete data for respondent or protected parties, illegible forms, protective orders without a judge’s signature), and overall lack of documentation supporting the VCIN entry. One of the initial goals of the grant was to reduce the number of unserved or unentered protective orders in VCIN. One of the ongoing goals of VCIN operations and the GEAP grant is to have the most accurate and timely data.

71. *See* MCDONNELL, *supra* note 67, at 24. The Protective Order Registry is a “real-time” system. In other words, it does not yield historical data or trends. Nonetheless, preliminary findings over a one-year period (FY2003) regarding the 40,234 in the Registry on a particular day indicated that 17,067 (42%) of all protective orders (that is Emergency, Preliminary and so-called “full” or “permanent” Protective Order, whether for Family Abuse, Stalking/Acts of Violence or Child) had not been served. This forty-two percent unserved protective order figure—while only a snapshot for a particular day and time—indicated that protective order service and/or data entry could be improved.

72. *Id.*

73. *Id.*

VCIN.<sup>74</sup> That said, as of January 2009, audits conducted by the Virginia Department of State Police indicated that 1200 protective orders remained unserved.<sup>75</sup>

Beyond these issues, if protective order data is not properly entered into VCIN and law enforcement officers in the field are required to enforce protective orders without having a copy to review, they may still enforce protective orders under certain conditions, but they will be unable to verify the existence, conditions, or other relevant information on the protective order.<sup>76</sup> This situation could lead to civil liability if a valid protective order was not entered into VCIN and injuries arise from a local law enforcement or judicial agency's failure to enforce a protective order.<sup>77</sup>

#### G. 2008 Legislative Proposals to Improve Protective Order Data in VCIN

Up until 2007, the language regarding the duties of the clerk to transfer protective order data to VCIN through the electronic CMS-VCIN interface, as well as the duties of the law enforcement agent after verifying the protective order information in VCIN to serve the order, was permissive:

The clerk shall, upon receipt, forward forthwith an attested copy of the order to the local police department or sheriff's office which shall, upon receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network system established and maintained by the Department pursuant to Chapter 2 ([section] 52-12 et seq.) of Title 52. 8. *Where practical*, the court or magistrate *may* transfer information electronically to

---

74. *Id.*

75. *Id.*

76. See VA. CODE ANN. § 16.1-279.1(E) (Cum. Supp. 2008) (noting that a law enforcement officer "may, in the performance of his duties, . . . rely upon the statement of any person protected by the order that the order remains in effect."); Talking Points to Support S.B. 540, Va. Gen. Assembly (Reg. Sess. 2008), Susheela Varky, Staff Attorney, Va. Poverty Law Ctr. (Jan. 2007) (on file with author).

77. See VA. CODE ANN. § 16.1-279.1(E) (Cum. Supp. 2008) (noting that a law enforcement officer "may, in the performance of his duties, . . . rely upon the statement of any person protected by the order that the order remains in effect."); Talking Points to Support S.B. 540, Va. Gen. Assembly (Reg. Sess. 2008), Susheela Varky, Staff Attorney, Va. Poverty Law Ctr. (Jan. 2007) (on file with author).

the Virginia Criminal Information Network system. A copy of [a] protective order issued pursuant to this section shall be served upon the respondent *as soon as possible*, and upon service, the agency making service shall enter the date and time of service into the Virginia Criminal Information Network system.<sup>78</sup>

Based on this language and the aforementioned Virginia GEAP project findings, discussion ensued among members of the Governor's Commission on Sexual Violence,<sup>79</sup> especially those familiar with these issues,<sup>80</sup> and led to a recommendation to amend the Code of Virginia to require court personnel to enter protective order data into VCIN "within a specific timeframe."<sup>81</sup>

During the 2008 Virginia General Assembly Session, Senator Mark D. Obenshain and Delegate Christopher K. Peace sponsored identical bills to change the abovementioned 2007 language to address a myriad of problems with protective order entry into VCIN and service. This is the language that became effective as of July 1, 2008:

*The protective order shall expire at the end of the last day identified for the two-year period and if no date is identified, it shall expire at the end of the two years following the date of issuance. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. ~~The clerk shall, upon receipt, forward forthwith an attested copy of the order to the local police department or sheriff's office which shall, upon receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network system established and~~*

78. See VA. CODE ANN. § 16.1-279.1(E) (Repl. Vol. 2007) (emphasis added).

79. Governor Timothy M. Kaine established the Commission on Sexual Violence to: (1) review the recommendations in 2005's Senate Document 18 and in the Sexual Violence State Plan; (2) seek input and comments through regional public hearings; (3) design strategies to develop recommendations from the aforementioned sources; (4) design strategies to institutionalize these recommendations into practice throughout Virginia; and (5) make any other appropriate recommendations. Exec. Order No. 38 (2006).

80. Law enforcement members of the Governor's Commission on Sexual Violence, especially those from the Virginia Department of State Police and the Virginia Association of Chiefs of Police, and members who represented the courts and the Office of the Executive Secretary of the Supreme Court of Virginia, were able to discuss the impact of delayed entries of protective orders into VCIN.

81. GOVERNOR'S COMM'N ON SEXUAL VIOLENCE, REPORT AND RECOMMENDATIONS 15-16 (2007), available at <http://www.publicsafety.virginia.gov/Initiatives/SexViolence/CSV-Final-Report.pdf>.



~~maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the~~ *The court may shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer identifying information provided to the court electronically to the Virginia Criminal Information Network—system and shall forthwith forward the attested copy of the protective order and an addendum containing any such identifying information to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order and addendum by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 ([section] 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order and an addendum containing identifying information to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order and addendum, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 ([section] 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded—and entered in the system as described above forthwith to the*

*primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court.<sup>82</sup>*

These two bills attempted to improve existing law by

- making the electronic transfer of identifying information to VCIN by courts mandatory, not permissive;
- requiring that said transfer be completed by the “end of the business day;”
- requiring that a copy of the protective order with identifying information be forwarded to the agency responsible for service and entry of POs “forthwith;”
- providing a mechanism, like an addendum, for courts and law enforcement agencies responsible for the service and entry of protective orders to communicate about and correct data on the protective order without having to schedule another hearing;<sup>83</sup>
- expediting the service and return of service of the protective order;

---

82. H.B. 753, Va. Gen. Assembly (Reg. Sess. 2008), ¶ 1, § 16.1-279.1(B) (enacted as Act of March 4, 2008, ch. 73, 2009 Va. Acts. \_\_\_); S.B. 540, Va. Gen. Assembly (Reg. Sess. 2008), ¶ 1, § 16.1-279.1(B) (enacted as Act of Mar. 6, 2008, ch. 246, 2009 Va. Acts. \_\_\_).

83. Among the agencies that worked with Delegate Peace and Senator Obenshain on acceptable language in their respective bills, there was discussion that a routine correction on a protective order would require a new hearing to preserve the respondent’s due process rights. So, for example, if the primary law enforcement agency responsible for entering and verifying VCIN data noted (by checking other reliable criminal justice agency databases) that numbers on the respondent’s date of birth were transposed, instead of being able to make corrections on the PO and send a copy back to the court for its records, a new hearing would have to be held to make such a correction. Language throughout the bills indicated that “[i]f any identifying information in the addendum is determined to be incorrect by the entering agency, the agency shall enter the corrected information into the Virginia Criminal Information Network.” H.B. 753, Va. Gen. Assembly (Reg. Sess. 2008), ¶ 1, § 16.1-253(M) (enacted as Act of March 4, 2008, ch. 73, 2009 Va. Acts. \_\_\_); S.B. 540, Va. Gen. Assembly (Reg. Sess. 2008), ¶ 1, § 16.1-253(M) (enacted as Act of March 6, 2008, ch. 246, 2009 Va. Acts. \_\_\_). In other words, the addendum, unlike the protective order, was not an actual court order; so corrections could be made on it and communicated between agencies without having to conduct a new hearing.

- requiring Circuit Courts that do not have access to the CMS-VCIN interface that transfers essential protective order data electronically to VCIN to “forthwith forward the attested copy of the protective order” and the addendum;<sup>84</sup>
- requiring that a copy of a dissolved or modified order be attested and “forwarded forthwith” to the law enforcement agency responsible for service and entry of protective orders;
- expediting the verification and entry of any such modified order into VCIN; and
- expediting the service and return of service to court of such modified order.<sup>85</sup>

There was also an effort to clarify the expiration times of Emergency Protective Orders and of “full” Family Abuse Protective Orders:

- Emergency Protective Orders<sup>86</sup> “shall expire ~~seventy-two hours after~~ *at the end of the third day following* issuance. If the expiration of ~~the seventy-two hour period~~ occurs at a time that the court is not in session, the emergency protective order shall be extended until ~~5 p.m.~~ *the end* of the next business day that the juvenile and domestic relations district court is in session.”<sup>87</sup>
- A law enforcement officer requesting an extension of an Emergency Protective Order may do so for an “additional period of time not to exceed ~~seventy-two hours~~ *three days* after expiration of the original order.”<sup>88</sup>

84. VA. CODE ANN. § 16.1-296 (Cum. Supp. 2008). Most Family Abuse Protective Orders are heard by Juvenile and Domestic Relations District Courts. Upon a “de novo” appeal of a protective order at the Juvenile and Domestic Relations District Court level, however, Circuit Courts will hear the protective order. *See id.* Unlike the practice in Juvenile and Domestic Relations District Courts, Circuit Courts do not have access to the CMS-VCIN screens that interface with VCIN.

85. H.B. 753, Va. Gen. Assembly (Reg. Sess. 2008), ¶ 1, § 16.1-279.1(B) (enacted as Act of March 4, 2008, ch. 73, 2009 Va. Acts. \_\_\_); S.B. 540, Va. Gen. Assembly (Reg. Sess. 2008), ¶ 1, § 16.1-279.1(B) (enacted as Act of Mar. 6, 2008, ch. 246, 2009 Va. Acts. \_\_\_).

86. *See infra* notes 87–88 and accompanying text. While the legislature amended the time expiration provisions of both Emergency Protective Orders under Virginia Code section 16.1-253.4 and Stalking/Acts of Violence Emergency Protective Orders under section 19.2-152.8, these amendments were very similar, so only the changes to section 16.1-253.4 are cited here.

87. H.B. 753, Va. Gen. Assembly (Reg. Sess. 2008), ¶ 1, § 16.1-253.4(C) (enacted of Act of March 4, 2008, ch. 73, 2009 Va. Acts. \_\_\_); S.B. 540, Va. Gen. Assembly (Reg. Sess. 2008), ¶ 1, § 16.1-253.4(C) (enacted of Act of March 6, 2008, ch. 246, 2009 Va. Acts. \_\_\_).

88. H.B. 753, Va. Gen. Assembly (Reg. Sess. 2008), ¶ 1, § 16.1-253.4(D) (enacted of Act of March 4, 2008, ch. 73, 2009 Va. Acts. \_\_\_); S.B. 540, Va. Gen. Assembly (Reg. Sess. 2008), ¶ 1, § 16.1-

- A “full” Family Abuse Protective Order “*shall expire at the end of the last day identified for the two-year period and if no date is identified, it shall expire at the end of the two years following the date of issuance.*”<sup>89</sup>

#### H. 2009 Legislative Proposal to Address Unintended Consequences of 2008 Legislative Proposal and to Improve Protective Order Data in VCIN

As of this publication, over one year has passed since the July 1, 2008 protective order VCIN entry improvement legislation became law. Since then, an addendum was created to accompany the protective order to correct problems related to changing typographical and other minor errors without having to conduct another hearing. All of the identifying information (i.e., respondent’s race, sex, date of birth, eye color, hair color, etc.) was removed from the face of the protective order (where it used to appear on the upper right-hand side) and placed on this addendum. The idea is that the addendum is not technically a court order and, therefore, could be revised without another court hearing.

An unintended consequence of removing the respondent’s identifying information from the face of the protective order and placing it on the addendum is that the protective order itself would not then meet “facial validity” requirements. When a protective order is valid on its face, it contains the following: the issuing court, the date and case number, both parties to the order, the name, race, sex and at least one numerical identifier (e.g., date of birth) of the parties, and the expiration date.<sup>90</sup> With all of the respondent’s identifying information other than name and address removed from the face of the protective order and put on an addendum, the protective order is no longer valid on its face.

Moreover, the addendum failed to travel with the protective order on a regular basis.<sup>91</sup> When it did accompany the protective order, it often

---

253.4(D) (enacted of Act of March 6, 2008, ch. 246, 2009 Va. Acts. \_\_\_\_).

89. H.B. 753, Va. Gen. Assembly (Reg. Sess. 2008), ¶ 1, § 16.1-279.1(B) (enacted of Act of March 4, 2008, ch. 73, 2009 Va. Acts. \_\_\_\_); S.B. 540, Va. Gen. Assembly (Reg. Sess. 2008), ¶ 1, § 16.1-279.1(B) (enacted of Act of March 6, 2008, ch. 246, 2009 Va. Acts. \_\_\_\_).

90. Denise O. Dancy, Project Dir., Nat’l Ctr. for State Courts, Address at the William and Mary Law School Therapeutic Jurisprudence Program Conference: Virginia’s Response to Domestic Violence (Apr. 27, 2007).

91. The author represented a client in a protective order hearing on December 11, 2008 and obtained a protective order for the client, but neither the client nor the author received an addendum. Anecdotal evidence indicated that most local legal aid offices were practicing in courts that did not disseminate addenda. Additionally, some addenda were lost because they were given to petitioners to complete without instructions to return the completed form to the court.

did not contain complete information. For all intents and purposes, critical data allowing a law enforcement officer to serve and enforce a protective order was no longer on the protective order. Finally, the language regarding the expiration of both emergency and “full” protective orders remains unclear.

A broad coalition of partners met on several occasions to try to address these unintended consequences of the 2008 legislation and to develop a “clean-up” bill.<sup>92</sup> On the Senate side, the 2008 bill sponsor, Senator Mark Obenshain, co-patroned the 2009 bill with Senator John Edwards. With new bill submission restrictions on the House of Delegates,<sup>93</sup> Delegate Peace—the sponsor of the 2008 bill—was unable to submit a bill. The 2009 “clean-up” bill made the following significant changes:

The protective order may be issued for a specified period; however, unless otherwise authorized by law, a protective order may not be issued under this section for a period longer than two years. The protective order shall expire ~~at the end of 11:59 p.m. on the last day identified for specified~~ or at 11:59 p.m. on the last day of the two-year period ~~and if no date is identified, it shall expire at the end of the two years following the date of issuance specified.~~ A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer *electronically to the Virginia Criminal Information Network the respondent’s identifying information and the name, date of birth, sex, and race of each protected person* provided to the court ~~electronically to the Virginia Criminal Information Network~~ and shall forthwith forward the attested copy of the protective order ~~and an addendum~~ containing any such identifying information to the primary law-enforcement agency responsible for service and entry of protective orders.

92. The Office of the Governor of Virginia, the Virginia Office of the Attorney General, the Virginia Department of State Police, the Virginia Department of Criminal Justice Services, the Clerk’s Association, the Virginia Sexual and Domestic Violence Action Alliance, the Virginia Poverty Law Center, and the Office of the Executive Secretary of the Supreme Court of Virginia formed this broad coalition of partners.

93. See RULES OF THE VIRGINIA HOUSE OF DELEGATES 37 (2008–2009).

Upon receipt of the order ~~and addendum~~ by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 ([section] 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order ~~and an addendum~~ containing *the respondent's* identifying information *and the name, date of birth, sex, and race of each protected person provided to the court* to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order ~~and addendum~~, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 ([section] 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as

described above and the order shall be served forthwith and due return made to the court.<sup>94</sup>

The bill improved former law by

- removing addendum language throughout the protective order statutes, with the promise to put the respondent's identifying information back on the front page of the protective order;<sup>95</sup> and
- clarifying that emergency protective orders and protective orders expire at 11:59 p.m. on the expiration date of the order and specified the type of information the courts are to enter and transfer to the interface that feeds VCIN.<sup>96</sup>

### III. OUTSTANDING ISSUES AND CONCLUSIONS

Over the past two years, the timely entry into VCIN and service of protective orders has improved with the work of the Virginia GEAP partnership, recommendations from the Governor's Commission on Sexual Violence, and the two VCIN protective order entry legislative iterations during the 2008 and 2009 General Assembly sessions. The original problem for which the 2008 addendum was developed has not, however, been solved. Virginia law enforcement agents still may not correct typographical and other relatively minor errors on the protective order without conducting a new hearing to do so.

How can we continue to improve the processes and structures that ensure the timely entry and service of protective orders so Virginia never has data entry errors that yield the heartbreaking results of a Spicknall case?<sup>97</sup> The Commonwealth of Virginia still has work to do to ensure that victims remain safe, respondents are held accountable, and

94. S.B. 1439, Va. Gen. Assembly (Reg. Sess. 2009), ¶ 1, § 16.1-279.1(B) (enacted as Act of March 9, 2009, ch. 732, 2009 Va. Acts. \_\_\_\_).

95. *Id.* The Office of the Executive Secretary of the Supreme Court of Virginia is responsible for making recommendations based on legislative changes to their Forms Committees, which meets twice a year and promulgates forms for use in Virginia's courts.

96. *Id.* This provision actually saves the Commonwealth money because the NCIC already automatically sets protective orders in it to expire at 11:59 p.m. on the expiration date. Because Virginia's EPO and PO expiration times were different from 11:59 p.m., law enforcement agents responsible for the entry and verification of VCIN had to enter manually NCIC to remove expired protective orders from the NCIC system. With this change, they will no longer need to cancel expired EPOs and POs manually in VCIN. Instead they may set all EPOs and POs to expire at 11:59 p.m. automatically.

97. See *supra* notes 3–27 and accompanying text.

law enforcement officers have all of the tools available to do their jobs well. The following recommendations provide a starting point.

The Virginia GEAP partnership's findings and work demonstrate that effective inter-agency communications are essential to a successful protective order process. Ongoing efforts to keep these lines of communication open, sustain positive relationships, and support the timely entry, service, and enforcement of protective orders is necessary.<sup>98</sup>

Court and law enforcement personnel should continue to improve data quality issues such as setting the Brady indicator appropriately to indicate the relationship between the parties. If the Brady indicator is not correctly set, it is not correctly applied, and the purchase of firearms may be permissible outside of Virginia. In other words, even though the respondent would not be able to purchase a firearm in Virginia if his information is in VCIN,<sup>99</sup> if the Brady indicator for "intimate partner" status is not set properly, the respondent could go to another state—including one of the seven that share a border with Virginia—and potentially be able to purchase a firearm.<sup>100</sup>

Law enforcement agencies should prioritize the service of protective orders along with criminal warrants.<sup>101</sup> Court clerks should continue to prioritize the immediate and accurate transfer of electronic data regarding protective orders into the CMS-VCIN interface. All copies of protective orders should continue to be forwarded to the appropriate law enforcement agencies by the end of the business day. Circuit court clerks should have access to the CMS-VCIN interface as well.

The Office of the Executive Secretary of the Supreme Court of Virginia should continue to improve the uniformity of Virginia's own protective order forms. When the information collected on all of the protective order forms, whether a Stalking or a Family Abuse protective order, is similar and displayed in the same locations, the form's recognizability leads to improved data entry, service, and enforcement of the order.<sup>102</sup>

The Commonwealth should adopt a model first page of a protective order as suggested by the National Center for State Courts' *Project*

---

98. Fagan, *supra* note 39.

99. *See supra* note 32 and accompanying text.

100. *See* Fagan, *supra* note 39.

101. *Id.*

102. *See* Dancy, *supra* note 91; *see also infra* note 104 and accompanying text.



*Passport*. One of *Project Passport*'s recommendations is to increase the size of the "CAUTION: Weapon Involved" checkbox to warn law enforcement officers responsible for serving and enforcing protective orders of the potential danger.<sup>103</sup> Law enforcement agencies find that adopting a recognizable first page of their protective order has led to the following: (1) protective orders receiving a higher level of priority; (2) greater weight given to out-of-state orders; (3) greater awareness of victims' needs and rights; and (4) more opportunities for training on protective orders.<sup>104</sup>

The Virginia General Assembly should pass legislation to make Virginia's firearms prohibitions laws consistent with federal firearms prohibitions laws. Year after year, legislative proposals that would do this by adding the word "possess" to section 18.2-308.1:4 the Code of Virginia fail.<sup>105</sup> Upon entry into VCIN, law enforcement officers should routinely forward copies of protective orders to the appropriate Commonwealth's Attorney's Office when there is a collateral criminal prosecution.<sup>106</sup>

In the words of the Executive Director of the Maryland Governor's Office of Crime Control and Prevention in response to the Spicknall matter and his office's attempt to improve the MILES system, "[i]t's unfortunate that the Spicknall case brought this to our attention. One critical error is one too many."<sup>107</sup>

---

103. As of April 2007, twenty-three states and the District of Columbia had adopted a recognizable first page to their protective orders based on the *Project Passport* model template, and seven others were in the process of adopting one. See Dancy, *supra* note 91, at 19. All of Virginia's surrounding states have either already adopted a recognizable first page of their protective orders or are in the process of adopting one. See *id.*

104. KONNIE K. YOUNG, DOMESTIC VIOLENCE & FAMILY LAW SPECIALIST, SUPREME COURT OF ARIZ., VOICES FROM EXPERIENCE: THE POSITIVE IMPACT OF IMPLEMENTING PROJECT PASSPORT (2007) (on file with author).

105. See, e.g., H.B. 281, Va. Gen. Assembly (Reg. Sess. 2008), ¶ 1, § 18.2-308.1:4 (as introduced Jan. 2, 2008 by the House Militia, Police, and Public Safety Committee).

106. GOVERNOR'S COMM'N ON SEXUAL VIOLENCE, *supra* note 28, at 15-16.

107. See Barnhardt, *supra* note 24.