WEST VIRGINIA CODE: §48-27-403

§48-27-403. Emergency protective orders of court; hearings; persons present.

(a)(1) Upon the filing of a verified petition under this article, the magistrate court may enter an emergency protective order as it may determine necessary to protect the petitioner or minor children from domestic violence and, upon good cause shown, may do so ex parte without the necessity of bond being given by the petitioner. Clear and convincing evidence of immediate and present danger of abuse to the petitioner or minor children constitutes good cause for the issuance of an emergency protective order pursuant to this section. For purposes of this section, the court may treat a military protective order as clear and convincing evidence of immediate and present danger of abuse to the petitioner or his or her minor children if the military protective order:

(A) Is still in effect and has not been terminated; and

(B) Was issued against the respondent because the petitioner was a reported victim of domestic abuse by the respondent.

(2) If the respondent is not present at the proceeding, the petitioner or the petitioner's legal representative shall certify to the court, in writing, the efforts which have been made to give notice to the respondent or just cause why notice should not be required. Copies of medical reports or records may be admitted into evidence to the same extent as though the original reports or records. The custodian of the records is not required to be present to authenticate the records for any proceeding held pursuant to this subsection. If the magistrate court determines to enter an emergency protective order, the order shall prohibit the respondent from possessing firearms.

(b) Following the proceeding, the magistrate court shall order a copy of the petition to be served immediately upon the respondent, together with a copy of any emergency protective order entered pursuant to the proceedings, a notice of the final hearing before the family court, and a statement of the right of the respondent to appear and participate in the final hearing, as provided in subsection (d) of this section. Copies of any order entered under the provisions of this section, a notice of the final hearing before the family court, and a statement of the right of the petitioner to appear and participate in the final hearing, as provided in subsection (d) of this section, shall also be delivered to the petitioner. Copies of any order entered shall also be delivered to any law-enforcement agency having jurisdiction to enforce the order, including municipal police, the county sheriff's office and local office of the State Police, within 24 hours of the entry of the order. An emergency protective order is effective until modified by order of the family court upon hearing as provided in subsection (d) of this section. The order is in full force and effect in every county in this state.

(c) Subsequent to the entry of the emergency protective order, service on the respondent, and the delivery to the petitioner and law-enforcement officers, the court file shall be

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transferred to the office of the clerk of the circuit court for use by the family court.

(d) The family court shall schedule a final hearing on each petition in which an emergency protective order has been entered by a magistrate. The hearing shall be scheduled not later than 10 days following the entry of the order by the magistrate. The notice of the final hearing shall be served on the respondent and delivered to the petitioner, as provided in subsection (b) of this section, and must set forth the hearing date, time, and place and include a statement of the right of the parties to appear and participate in the final hearing. The notice must also provide that the petitioner's failure to appear will result in a dismissal of the petition and that the respondent's failure to appear may result in the entry of a protective order against him or her for a period of 90 or 180 days, as determined by the court. The notice must also include the name, mailing address, physical location, and telephone number of the family court having jurisdiction over the proceedings. To facilitate the preparation of the notice of final hearing required by the provisions of this subsection, the family court must provide the magistrate court with a day and time in which final hearings may be scheduled before the family court within the time required by law.

(e) Upon final hearing the petitioner must prove, by a preponderance of the evidence, the allegation of domestic violence or that he or she reported or witnessed domestic violence against another and has, as a result, been abused, threatened, harassed, or has been the subject of other actions to attempt to intimidate him or her, or the petition shall be dismissed by the family court. If the respondent has not been served with notice of the emergency protective order, the hearing may be continued to permit service to be effected. The failure to obtain service upon the respondent does not constitute a basis to dismiss the petition. Copies of medical reports may be admitted into evidence to the same extent as though the original thereof, upon proper authentication, by the custodian of the records.

(f) A person requested by a party to be present during a hearing held under the provisions of this article shall not be precluded from being present unless that person is to be a witness in the proceeding and a motion for sequestration has been made and the motion has been granted. A person found by the court to be disruptive may be precluded from being present.

(g) Upon hearing, the family court may dismiss the petition or enter a protective order for a period of 90 days or, in the discretion of the court, for a period of 180 days. The hearing may be continued on motion of the respondent, at the convenience of the court. Otherwise, the hearing may be continued by the court no more than seven days. If a hearing is continued, the family court may modify the emergency protective order as it considers necessary.

(h) Notwithstanding any other provision of this code to the contrary, a petition filed pursuant to this section that results in the issuance of an emergency protective order naming a juvenile as the respondent in which the petition for the emergency protective order is filed by or on behalf of the juvenile's parent, guardian or custodian, or other person with whom the juvenile resides shall be treated as a petition authorized by §49-4-704 of this code, alleging the juvenile is a juvenile delinquent: *Provided*, That the magistrate court shall notify the prosecuting attorney in the county where the emergency protective order is issued

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within 24 hours of the issuance of the emergency protective order and the prosecuting attorney may file an amended verified petition to comply with the provisions of §49-4-704(a) of this code within two judicial days.

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