

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-25-79

Time 1:00 p.m.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979

— ● —

ENROLLED

Committee Substitute for
HOUSE BILL No. 743

(By Mrs. Hartman & Mrs. Nehrl)

— ● —

Passed March 10, 1979

In Effect Ninety Days From Passage



No. 743

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 743

(By MRS. HARTMAN and MRS. WEHRLE)

[Passed March 10, 1979; in effect ninety days from passage.]

AN ACT to amend chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a, relating to protection and relief for persons abused by members of their household; setting forth legislative findings and intent; providing definitions; relating to court jurisdiction; providing for procedures and relief; providing emergency provisions; providing for temporary protective orders; relating to enforcement and contempt penalties; providing exceptions; and providing that husband and wife may not refuse to testify on the ground that their communications with one another are privileged.

Be it enacted by the Legislature of West Virginia:

That chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-a, to read as follows:

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.

§48-2A-1. Purpose.

- 1 The purpose of this article is to prevent continuing abuse of
- 2 one family or household member at the hands of other family

3 or household member. Nothing contained in this article shall
4 be construed as affecting the abused party's rights of action
5 or claims which are otherwise provided for in this code or by
6 common law. An abusing party will remain subject to a
7 damage claim or charges of criminal conduct. It is the intent
8 of the Legislature to provide temporary and immediate relief
9 for an abused party so that he or she may make rational de-
10 cisions regarding their future, thus enabling them to initiate
11 procedures for appropriate permanent remedies. It is further
12 intended that no proceeding under this article shall be initiated
13 during the pendency of a divorce action between the person
14 seeking relief under the provisions of this article and the
15 alleged defendant.

§48-2A-2. Definitions.

1 As used in this article, unless the context clearly requires
2 otherwise:

3 (a) "Abuse" means the occurrence of one or more of
4 the following acts between family or household members who
5 reside together or who formerly resided together;

6 (1) Attempting to cause or intentionally, knowingly or
7 recklessly causing bodily injury with or without a dangerous
8 or deadly weapon.

9 (2) Placing by physical menace another in fear of im-
10 minent serious bodily injury.

11 (3) Sexually abusing a person under the age of eighteen
12 years.

13 (b) "Family or household members" means spouses, per-
14 sons living as spouses, persons who formerly resided as
15 spouses, parents, children, and stepchildren, or other persons
16 related by consanguinity or affinity.

17 (c) "Sexual abuse" shall have the same meaning as the
18 definitions of "sexual assault" and "sexual abuse" in article
19 eight-b, chapter sixty-one of this code.

§48-2A-3. Jurisdiction.

1 Circuit courts and magistrate courts, as constituted under

2 chapter fifty of this code, shall have concurrent jurisdiction
3 over proceedings under this article. The complaining party's
4 right to relief under this article shall not be affected by his or
5 her leaving the residence or household to avoid further abuse.
6 Any petition filed under the provisions of this article shall
7 be given priority over any other civil action before the court
8 except actions in which trial is in progress, and shall be
9 docketed immediately upon filing.

§48-2A-4. Commencement of proceedings; counterclaim.

1 (1) A person may seek relief under this article for himself
2 or herself, or any parent or adult household member may seek
3 relief under this article on behalf of a minor child, by filing
4 a verified petition alleging abuse by the respondent.

5 (2) The West Virginia supreme court of appeals shall
6 prescribe the form to be used for preparing a petition under
7 this article, and shall distribute such forms to the clerk of the
8 circuit court of each county within the state.

9 (3) The respondent named in any petition alleging abuse
10 may file a counterclaim or raise any affirmative defenses.

§48-2A-5. Hearings.

1 (1) Upon filing of a verified petition under this article, the
2 court may enter such temporary orders as it may deem neces-
3 sary to protect the complainant or minor children from abuse,
4 and, upon good cause shown, may do so ex parte without
5 the necessity of bond being given by the plaintiff. Clear and
6 convincing evidence of immediate and present danger of
7 abuse to the complainant or minor children shall constitute
8 good cause for purposes of this action. If the defendant is not
9 present at the proceeding, complainant or complainant's legal
10 representative shall certify to the court in writing, the efforts
11 which have been made to give notice to the defendant or just
12 cause why notice should not be required. Following such pro-
13 ceeding, the court shall order a copy of the petition to be
14 served immediately upon the defendant, together with a copy
15 of any protective order issued pursuant to the proceeding,
16 notice setting forth the time and place of the full hearing and
17 a statement of the right of the defendant to be present and to

18 be represented by counsel. Such initial protective order shall
19 remain effective until a full hearing is held.

20 (2) Within five days following the issuance of the court's
21 temporary order, a full hearing shall be held at which the
22 complainant must prove the allegation of abuse by a pre-
23 ponderance of the evidence, or such petition shall be dis-
24 missed. At such hearing, the court may make any protective
25 orders or approve any consent agreement authorized by this
26 article.

27 (3) If a hearing is continued, the court may make or extend
28 such temporary orders as it deems necessary.

§48-2A-6. Relief.

1 (1) The court may grant any protective order it deems
2 necessary to bring about a cessation of abuse of the com-
3 plainant or minor children, which may include:

4 (a) Directing the defendant to refrain from abusing the
5 complainant or minor children;

6 (b) Granting possession to the complainant of the residence
7 or household to the exclusion of the defendant when the
8 residence or household is jointly owned or leased by the
9 parties;

10 (c) When the defendant has a duty to support the com-
11 plainant or minor children living in the residence or house-
12 hold and the defendant is the sole owner or lessee, granting
13 possession to the complainant of the residence or household
14 to the exclusion of the defendant or by consent agreement
15 allowing the defendant to provide suitable, alternate housing;

16 (d) Awarding temporary custody of or establishing tempo-
17 rary visitation rights with regard to minor children;

18 (e) Ordering the defendant to pay to the complainant a
19 sum for temporary support and maintenance of the abused
20 party. This order is of a temporary nature and, on the thir-
21 tieth day following issuance of the order, that portion of the
22 order requiring the defendant to pay support, becomes void
23 unless the beneficiary of that order has filed a petition for

24 divorce with a prayer for temporary support and maintenance
 25 under section thirteen, article two, chapter forty-eight of this
 26 code or has initiated an action for separate maintenance under
 27 section twenty-eight, article two, chapter forty-eight of this
 28 code. When there is a subsequent ruling on a petition for
 29 support under section thirteen article two, chapter forty-
 30 eight of this code, that portion of the order requiring the
 31 defendant to pay support shall become void.

32 (2) Any protective order shall be for a fixed period of time
 33 not to exceed thirty days. The court may amend its order at
 34 any time upon subsequent petition filed by either party.

35 (3) No order under this article shall in any manner affect
 36 title to any real property.

37 Certified copies of any order made under the provisions of
 38 this article shall be issued to the plaintiff, the defendant and
 39 any law enforcement agency having jurisdiction to enforce the
 40 order or agreement, including the city police, the county
 41 sheriff's office or local office of the state police.

§48-2A-7. Contempt.

1 (1) Upon violation of any order issued pursuant to this
 2 article, the court shall upon the filing of appropriate pleadings
 3 by or on behalf of any aggrieved party, issue an order to show
 4 cause why the person violating any provisions of the court's
 5 order should not be held in contempt of court and set a time
 6 for a hearing thereon within five days of the filing of said
 7 motion.

8 (2) Notwithstanding any other provision of law to the con-
 9 trary, any sentence for contempt hereunder may include im-
 10 prisonment up to thirty days and a fine not to exceed one
 11 thousand dollars or both.

§48-2A-8. Evidence of husband and wife.

1 Husband and wife are competent witnesses in such pro-
 2 ceedings and cannot refuse to testify on the grounds of the
 3 privileged nature of their communications.

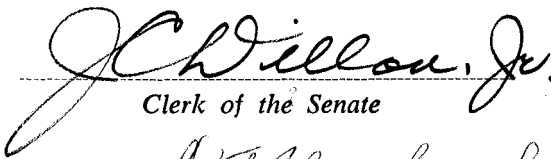
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

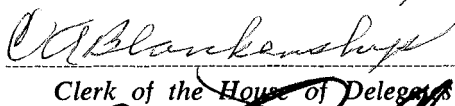

Chairman Senate Committee

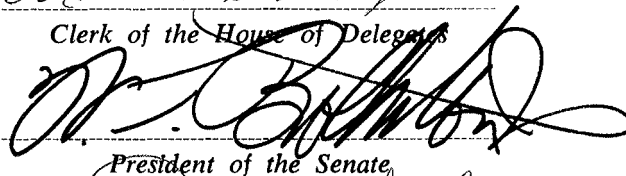

Chairman House Committee

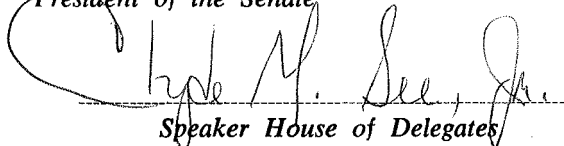
Originated in the House.

Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 25
day of March, 1979.


Governor

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OFFICE OF THE GOVERNOR

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