

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

— ● —

# ENROLLED

Com. Sub. for  
HOUSE BILL No. 4109

(By ~~MR.~~ Delegates Murphy & Guier...)

— ● —

Passed March 10, 1990

In Effect 90 Days from Passage

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 4109**  
**(By DELEGATES MURPHY AND GIVEN)**

[Passed March 10, 1990; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight, nine and ten, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prevention of domestic violence; purposes; definitions; jurisdiction; priority of petitions; commencement of proceedings; temporary orders of courts; hearings; protective orders; testimony of husband and wife; record keeping and reporting requirements; contempt; purposes; penalty for contempt; and enforcement.

*Be it enacted by the Legislature of West Virginia:*

That sections one, two, three, four, five, six, seven, eight, nine and ten, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.**

**§48-2A-1. Purpose.**

- 1     The purpose of this article is to prevent continuing
- 2     abuse of one family or household member at the hands
- 3     of other family or household member. Nothing contained

4 in this article shall be construed as affecting the abused  
5 party's rights of action or claims which are otherwise  
6 provided for in this code or by common law. An abusing  
7 party will remain subject to a damage claim or charges  
8 of criminal conduct. It is the intent of the Legislature  
9 to provide temporary and immediate relief for an  
10 abused party so that he or she may make rational  
11 decisions regarding their future, thus enabling them to  
12 initiate procedures for appropriate permanent remedies.  
13 It is further intended that magistrates fully explain to  
14 persons alleging spousal abuse the procedures involved  
15 pursuant to a domestic violence petition. Magistrates  
16 shall also inform such persons alleging abuse to the  
17 existence of the nearest residential or other protective  
18 facility. It is further intended that no proceeding under  
19 this article shall be initiated during the pendency of a  
20 divorce action between the person seeking relief under  
21 the provisions of this article and the alleged defendant.  
22 Any order entered by virtue of this article, unless it has  
23 expired by virtue of the provisions herein regarding  
24 periods of time the order remains in effect, shall remain  
25 in full force and effect upon the filing by either party  
26 of a complaint for divorce, annulment or separate  
27 maintenance until such time as the family law master  
28 or circuit judge, having jurisdiction over said action,  
29 enters an order superseding such protective order.

**§48-2A-2. Definitions.**

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

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

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

9 (2) Placing by physical menace another in fear of  
10 imminent serious bodily injury;

11 (3) Creating fear of bodily injury by harassment,  
12 psychological abuse or threatening acts;

13 (4) Sexual abuse; and,

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

18 (c) "Sexual abuse" has the same meaning as the  
19 definitions of "sexual assault" and "sexual abuse" in this  
20 code.

**§48-2A-3. Jurisdiction; effect of complaining party  
leaving residence; priority of petitions filed  
under this article.**

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

**§48-2A-4. Commencement of proceeding; counterclaim.**

1 (a) A person may seek relief under this article for  
2 himself or herself, or any parent or adult household  
3 member may seek relief under this article on behalf of  
4 a minor child, by filing a verified petition alleging abuse  
5 by the respondent. No person shall be refused the right  
6 to file a petition under the provisions of this article if  
7 he or she presents facts sufficient under the provisions  
8 of this article for the relief sought.

9 (b) The West Virginia supreme court of appeals shall  
10 prescribe a form which shall be used for preparing a  
11 petition under this article, and the court shall distribute  
12 such forms to the clerk of the circuit court of each  
13 county within the state.

14 (c) The respondent named in any petition alleging  
15 abuse may file a counterclaim or raise any affirmative  
16 defenses.

17 (d) No person accompanying a person who is seeking  
18 to file a petition under the provisions of this article shall  
19 be precluded from being present if his or her presence  
20 is desired by the person seeking a petition unless the  
21 person's behavior is disruptive to the proceeding or is  
22 otherwise in violation of court rules.

**§48-2A-5. Temporary orders of court; hearings.**

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

23 (b) Within five days following the issuance of the  
24 court's temporary order, a full hearing shall be held at  
25 which the complainant must prove the allegation of  
26 abuse by a preponderance of the evidence, or such  
27 petition shall be dismissed. Copies of medical reports  
28 may be admitted into evidence to the same extent as  
29 though the original thereof, upon proper authentication,  
30 by the custodian of such records. At the hearing, the  
31 court may make any protective order or approve any  
32 consent agreement authorized by this article.

33 (c) No person requested by a party to be present

34 during a hearing held under the provisions of this  
35 article shall be precluded from being present unless  
36 such person is to be a witness in the proceeding and a  
37 motion for sequestration has been made and such has  
38 been granted or is found by the court to be disruptive  
39 or otherwise in violation of court rules.

40 (d) If a hearing is continued, the court may make or  
41 extend such temporary orders as it deems necessary.

**§48-2A-6. Protective orders.**

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

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

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

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

17 (4) Awarding temporary custody of or establishing  
18 temporary visitation rights with regard to minor  
19 children;

20 (5) Ordering the defendant to pay to the complainant  
21 a sum for temporary support and maintenance of the  
22 abused party. This order is of a temporary nature and,  
23 on the sixtieth day following issuance of the order, that  
24 portion of the order requiring the defendant to pay  
25 support, becomes void unless the beneficiary of that  
26 order has filed a petition for divorce with a prayer for  
27 temporary support and maintenance under section  
28 thirteen, article two, chapter forty-eight of this code or  
29 has initiated an action for separate maintenance under

30 section twenty-eight, article two, chapter forty-eight of  
31 this code. When there is a subsequent ruling on a  
32 petition for support under section thirteen, article two,  
33 chapter forty-eight of this code, that portion of the order  
34 requiring the defendant to pay support becomes void;

35 (6) Ordering the defendant to refrain from entering  
36 the school, business or place of employment of the  
37 complainant or household members or family members  
38 for the purpose of violating the protective order.

39 (7) Directing the parties or a party to participate in  
40 counseling;

41 (8) Ordering the defendant to refrain from contacting,  
42 telephoning, communicating, harassing or verbally  
43 abusing the complainant in any public place.

44 (b) Any protective order shall be for a fixed period of  
45 time not to exceed sixty days. The court may amend its  
46 order at any time upon subsequent petition filed by  
47 either party. .

48 (c) No order under this article shall in any manner  
49 affect title to any real property.

50 (d) Certified copies of any order made under the  
51 provisions of this article shall be issued to the plaintiff,  
52 the defendant and any law-enforcement agency having  
53 jurisdiction to enforce the order or agreement, including  
54 the city police, the county sheriff's office or local office  
55 of the state police.

#### **§48-2A-7. Contempt.**

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

8 (b) Notwithstanding any other provision of law to the  
9 contrary, any sentence for contempt hereunder may  
10 include imprisonment up to thirty days and a fine not  
11 to exceed one thousand dollars or both. In lieu of

12 confinement, the court may allow the contemnor to post  
13 bond as surety for the faithful compliance with the  
14 orders of the court.

**§48-2A-8. Testimony of husband and wife.**

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

**§48-2A-9. Record-keeping and reporting.**

1 (a) Each law-enforcement agency shall maintain  
2 records on all incidents of family or household abuse  
3 reported to it, and shall monthly make and deliver to  
4 the department of public safety a report on a form  
5 prescribed by the department, listing all such incidents  
6 of family or household abuse. Such reports shall include:

7 (1) The age and sex of the abused and abusing parties;

8 (2) The relationship between the parties;

9 (3) The type and extent of abuse;

10 (4) The number and type of weapons involved;

11 (5) Whether the law-enforcement agency responded to  
12 the complaint and if so, the time involved, the action  
13 taken and the time lapse between the agency's action  
14 and the abused's request for assistance;

15 (6) Whether the complaining party reported having  
16 filed complaints with regard to family or household  
17 abuse on any prior occasion and if so, the number of  
18 such prior complaints; and

19 (7) The effective dates and terms of any order of  
20 protection issued prior to or following the incident to  
21 protect the abused party: *Provided*, That no information  
22 which will permit the identification of the parties  
23 involved in any incident of abuse shall be included in  
24 such report.

25 (b) The department of public safety shall tabulate and  
26 analyze any statistical data derived from the reports  
27 made by law-enforcement agencies pursuant to this  
28 section, and publish a statistical compilation in the



29 department's annual uniform crime report, as provided  
30 for in section twenty-four, article two, chapter fifteen of  
31 this code.

32 (c) The statistical compilation shall include, but is not  
33 limited to, the following:

34 (1) The number of family violence complaints  
35 received;

36 (2) The number of complaints investigated;

37 (3) The number of complaints received from alleged  
38 victims of each sex;

39 (4) The average time lapse in responding to such  
40 complaints;

41 (5) The number of complaints received from alleged  
42 victims who have filed such complaints on prior  
43 occasions;

44 (6) The number of aggravated assaults and homicides  
45 resulting from such repeat incidents;

46 (7) The type of police action taken in disposition of the  
47 cases; and

48 (8) The number of alleged violations of orders of  
49 protection.

50 (d) As used in this section, the terms "abuse" and  
51 "family or household members" shall have the meanings  
52 given them in section two, article two-a, chapter forty-  
53 eight of this code; and the term "law-enforcement  
54 agency" shall include the West Virginia department of  
55 health and human resources in those instances of child  
56 abuse reported to the department which are not  
57 otherwise reported to any other law-enforcement  
58 agency.

59 (e) The department of public safety shall develop and  
60 implement policies and procedures to guide law-  
61 enforcement officers in responding to and investigating  
62 domestic violence episodes, making arrests for domestic  
63 violence episodes and in accordance with this section.  
64 Such policies and procedures are to be in effect by the  
65 first day of July, one thousand nine hundred ninety.

66 Copies of said policies and procedures are to be  
67 distributed to all law-enforcement departments in this  
68 state.

69 (f) Nothing in this section shall be construed to  
70 authorize the inclusion of information contained in a  
71 report of an incident of abuse in any local, state,  
72 interstate, national or international systems of criminal  
73 identification pursuant to section twenty-four, article  
74 two, chapter fifteen of this code: *Provided*, That nothing  
75 in this section shall prohibit the department of public  
76 safety from processing information through its criminal  
77 identification bureau with respect to any actual charge  
78 or conviction of a crime.

**§48-2A-10. Enforcement procedure for temporary and protective order.**

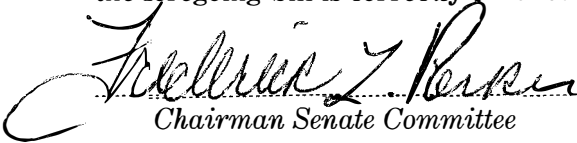
1 (a) Upon issuance of a temporary order as provided  
2 in section five of this article, and service thereof upon  
3 the defendant, or under relief granted in a protective  
4 order as provided in subsections (a) and (b), section six  
5 of this article of which the defendant has notice, a copy  
6 of such order shall, no later than the close of the next  
7 business day, be delivered to a local office of the city  
8 police, the county sheriff, and the West Virginia  
9 department of public safety, where it shall be placed in  
10 a confidential file, with access provided only to the law-  
11 enforcement agency and the respondent named on said  
12 order: *Provided*, That upon the expiration of any order  
13 issued pursuant to section five or six of this article, any  
14 such law-enforcement agency which has any such order  
15 on file, shall immediately expunge its confidential file  
16 of any reference thereto and destroy all copies of such  
17 order in its possession, custody or control. A sworn  
18 affidavit may be executed by the party awarded  
19 exclusive possession of the residence or household,  
20 pursuant to an order entered under subsection (b) of  
21 section six of this article, and delivered to such law-  
22 enforcement agency simultaneously with any such  
23 order, giving his consent for a law-enforcement officer  
24 to enter such residence or household, without a warrant,  
25 to enforce such protective order or temporary order.

26       (b) Any person who observes a violation of such order  
27       or the violated party may call a local law-enforcement  
28       agency, which shall verify the existence of a current  
29       order, and shall direct a law-enforcement officer to  
30       immediately investigate the alleged violation.

31       (c) Where a law-enforcement officer observes a  
32       violation of a valid order he may immediately arrest the  
33       subject of the order. In cases of violation of such orders  
34       occurring outside the presence of the investigating  
35       officer, the complainant may apply to a court in session  
36       for a warrant of arrest. If the court finds probable cause  
37       to believe that a valid order has been violated, the court  
38       shall issue such warrant for the arrest of the subject of  
39       the order wherever he may be found.

40       (d) Where there is an arrest, the officer shall take the  
41       arrested person before a court or the magistrate  
42       assigned to be available at such time and upon a finding  
43       of probable cause to believe a violation of an order has  
44       taken place, the court or magistrate shall set a time and  
45       place for a hearing, to take place within five days, and  
46       serve forthwith upon the alleged violator an order to  
47       show cause why he or she should not be held in contempt  
48       for violation of the prior order, which unless waived by  
49       the defendant shall be by trial by a jury of six persons.  
50       The remedies provided by this section shall be limited  
51       to violations of a temporary order or protective order  
52       entered pursuant to subsection (a) or (b), section six of  
53       this article.

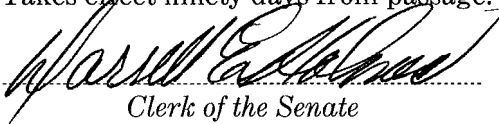
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee

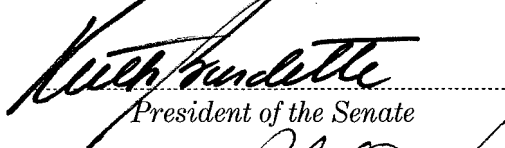
  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

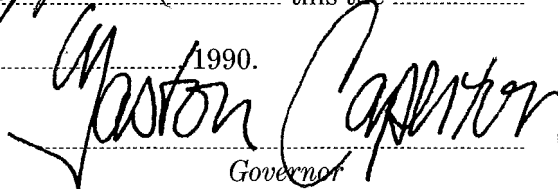
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 25th  
day of March 1990.

  
Governor

PRESENTED TO THE

GOVERNOR

Date

3/27/90

Time

4:47 pm

RECEIVED

1990 MAR 28 15 46 00

OFFICE OF THE ATTORNEY  
GENERAL