

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1991



ENROLLED

Committee Substitute for
SENATE BILL NO. 569

(By Senator Pritt, et al)



PASSED March 9, 1991

In Effect from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 569

(SENATORS PRITT, WEHRLE, WIEDEBUSCH, SPEARS,
MACNAUGHTAN, HOLLIDAY, BOLEY, DALTON,
JONES AND BLATNIK, *original sponsors*)

[Passed March 9, 1991; in effect from passage.]

AN ACT to amend and reenact sections one, two, three, four, five, six, nine and ten, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto two new sections, designated sections three-a and eleven; and to amend article one-c, chapter sixty-two of said code by adding thereto a new section, designated section seventeen-c, all relating to the prevention of domestic violence; purposes and intent; definitions; concurrent jurisdiction; circumstances under which right to relief not affected; priority of petitions; effect of action for divorce, separate maintenance or annulment upon entitlement to relief; responding officer's duty to inform parties and to transport or facilitate transportation of victims; filing of petition for relief; forms for petition; counterclaim; exclusion of other persons; venue; magistrate court assistance to persons desiring to file petition in other county; ex parte proceedings; burden of proof; notice of

ex parte hearing; service of temporary orders, notice of full hearing and statement of rights upon respondent; permitting service of process on Sundays and legal holidays; statewide effect of temporary order; time for full hearing; burden of proof; evidence; exclusion of other persons; continuances; protective orders; burden of proof before issuance; relief which is mandatory; other relief permitted; effective dates of orders; amendments of orders; statewide effect of protective order; title to real property; issuance of certified orders to law-enforcement agencies; records to be kept by law-enforcement agencies; monthly reports; confidential information; statistical compilation and publication thereof; further definitions; the legislative rules for law-enforcement agencies and officers relating to duties of such officers with respect to domestic violence promulgated by governor's committee on crime, delinquency and correction; advisory committee; extent of disclosure of information; delivery of orders to law-enforcement officers; confidential files; expungement and destruction of orders; affidavits of consent to enter household delivered with order; actual notice of contents of order not preventing stay of order; duties of law-enforcement agency upon receiving call from person observing violation of order; arrests of persons violating orders; obtaining arrest warrants; contempt proceedings; jury trial; violation of order constituting misdemeanor; criminal penalties; and conditions of bail.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, 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; that said article be further amended by adding thereto two new sections, designated sections three-a and eleven; and that article one-c, chapter sixty-two of said code be amended by adding thereto a new section, designated section seventeen-c, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

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
3 hands of another family or household member. Noth-
4 ing contained in this article shall be construed as
5 affecting the abused party's rights of action or claims
6 which are otherwise provided for in this code or by
7 common law. An abusing party will remain subject to
8 a damage claim or charges of criminal conduct. It is
9 the intent of the Legislature to provide temporary and
10 immediate relief for an abused party so that he or she
11 may make rational decisions regarding their future,
12 thus enabling them to initiate procedures for appropri-
13 ate permanent remedies. It is further intended that
14 magistrates fully explain to persons alleging abuse, as
15 defined in this article, the procedures involved pursu-
16 ant to a domestic violence petition. Magistrates shall
17 also inform such persons alleging abuse to the exist-
18 ence of the nearest residential or other protective
19 facility and of the availability of counseling services
20 for victims and their children. Any order entered by
21 virtue of this article, unless it has expired by virtue of
22 the provisions herein regarding periods of time the
23 order remains in effect, shall remain in full force and
24 effect upon the filing by either party of a complaint
25 for divorce, annulment or separate maintenance.

§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
5 members who reside together or who formerly resided
6 together:

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

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

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

14 (4) Sexual abuse.

15 (b) "Family or household member" means spouses,
16 persons living as spouses, persons who formerly
17 resided as spouses, parents, children and stepchildren,
18 current or former sexual or intimate partners, or
19 other persons related by consanguinity or affinity.

20 (c) "Sexual abuse" has the same meaning as the
21 definitions of "sexual assault" and "sexual abuse" in
22 this 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 resi-
6 dence or household to avoid further abuse. Any
7 petition filed under the provisions of this article shall
8 be given priority over any other civil action before the
9 court except actions in which trial is in progress, and
10 shall be docketed immediately upon filing. Where a
11 person is a party to an action for divorce, separate
12 maintenance or annulment in which no order has
13 been entered pursuant to section thirteen, article two
14 of this chapter, such person shall, pending such action,
15 remain entitled to file for and obtain any relief
16 provided by this article until such an order is entered
17 in such action. Where a person has filed for relief
18 provided by this article and subsequently becomes a
19 party to an action for divorce, separate maintenance or
20 annulment, such person shall, pending such action,
21 remain entitled to obtain any relief provided by this
22 article, and to again file for and obtain any such relief,
23 until an order is entered in such action pursuant to

24 section thirteen, article two of this chapter. No person
25 who is a party to a pending action for divorce, separate
26 maintenance or annulment in which an order has
27 been entered pursuant to section thirteen, article two
28 of this chapter, shall be entitled to file for or obtain
29 any relief provided by this article subsequent to the
30 entry of such an order until after the entry of an order
31 in such action which dismisses such action or which
32 grants or denies a divorce, separate maintenance or
33 annulment to such person.

§48-2A-3a. Responding officer's duty to advise parties; duty to transport or facilitate transportation.

1 (a) Any law-enforcement officer responding to an
2 alleged incident of abuse shall inform the parties
3 thereto of the availability of the possible remedies
4 provided by this article and the possible applicability
5 of the criminal laws of this state.

6 (b) Any law-enforcement officer responding to an
7 alleged incident of abuse shall, in addition to providing
8 the information required in subsection (a) of this
9 section, provide transportation for, or facilitate trans-
10 portation of, the victim or victims, upon the request of
11 such victim or victims, to a shelter or the appropriate
12 court where there is reasonable cause to believe that
13 such victim or victims have suffered or are likely to
14 suffer physical injury.

§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
5 abuse by the respondent. No person shall be refused
6 the right to file a petition under the provisions of this
7 article if he or she presents facts sufficient under the
8 provisions 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 distrib-
12 ute such forms to the clerk of the circuit court and

13 magistrate court of each 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
19 shall be precluded from being present if his or her
20 presence is desired by the person seeking a petition
21 unless the person's behavior is disruptive to the
22 proceeding or is otherwise in violation of court rules.

23 (e) The action may be heard in the county in which
24 the abuse occurred or in the county in which the
25 defendant is living. If the parties are married, the
26 action may also be brought in the county in which an
27 action for divorce, annulment or separate maintenance
28 between the parties may be brought as provided by
29 section eight, article two, chapter forty-eight of this
30 code.

31 (f) In the event a person who resides, temporarily or
32 permanently, in a county not described in subsection
33 (e) of this section desires to file a petition described in
34 subsection (a) of this section, such person may obtain
35 assistance in filing such a petition at a magistrate court
36 within the county of such place of temporary or
37 permanent residence. In such event, and upon request
38 of such person, a magistrate or the clerk of such
39 magistrate court shall:

40 (1) Provide to such person such forms and such
41 assistance as may be necessary for the filing of a
42 petition described in subsection (a) of this section;

43 (2) To the extent possible, contact and obtain from
44 any magistrate court described in subsection (e) of this
45 section chosen by the person seeking to file the
46 petition a hearing date for such petition; and

47 (3) Forward such petition to the magistrate court
48 described in subdivision (2) of this subsection for filing
49 together with any such other papers and documents
50 necessary to file the same.

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

1 (a) Upon filing of a verified petition under this
2 article, the court may enter such temporary orders as
3 it may deem necessary to protect the petitioner or
4 minor children from abuse, and, upon good cause
5 shown, may do so ex parte without the necessity of
6 bond being given by the petitioner. Clear and convinc-
7 ing evidence of immediate and present danger of
8 abuse to the petitioner or minor children shall consti-
9 tute good cause for purposes of this section. If the
10 respondent is not present at the proceeding, the
11 petitioner or the petitioner's legal representative shall
12 certify to the court, in writing, the efforts which have
13 been made to give notice to the respondent or just
14 cause why notice should not be required. Following
15 such proceeding, the court shall order a copy of the
16 petition to be served immediately upon the respon-
17 dent, together with a copy of any protective order
18 issued pursuant to the proceeding, notice setting forth
19 the time and place of the full hearing and a statement
20 of the right of the respondent to be present and to be
21 represented by counsel. Notwithstanding any other
22 provision of this code to the contrary, all law-
23 enforcement officers are hereby authorized to serve
24 all pleadings and orders filed or entered pursuant to
25 this article on Sundays and legal holidays. Such initial
26 protective order shall remain effective until such time
27 as a hearing is held. The order shall be in full force
28 and effect in every county in this state. The order
29 shall state that it is in full force and effect in every
30 county in this state.

31 (b) Within five days following the issuance of the
32 court's temporary order, a full hearing shall be held at
33 which the petitioner must prove the allegation of
34 abuse by a preponderance of the evidence, or such
35 petition shall be dismissed. Copies of medical reports
36 may be admitted into evidence to the same extent as
37 though the original thereof, upon proper authentica-
38 tion, by the custodian of such records. At the hearing,
39 the court may make any protective order or approve
40 any consent agreement authorized by this article.

41 (c) No person requested by a party to be present
42 during a hearing held under the provisions of this
43 article shall be precluded from being present unless
44 such person is to be a witness in the proceeding and
45 a motion for sequestration has been made and such
46 has been granted or is found by the court to be
47 disruptive or otherwise in violation of court rules.

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

§48-2A-6. Protective orders.

1 (a) At the conclusion of the hearing and if the
2 petitioner has proven the allegations of abuse by a
3 preponderance of the evidence, then the court shall
4 issue a protective order which shall direct the respon-
5 dent to refrain from abusing the petitioner and/or the
6 minor children, and may also include:

7 (1) Granting possession to the petitioner of the
8 residence or household to the exclusion of the defen-
9 dant when the residence or household is jointly owned
10 or leased by the parties;

11 (2) When the respondent has a duty to support the
12 petitioner or minor children living in the residence or
13 household and the respondent is the sole owner or
14 lessee, granting possession to the petitioner of the
15 residence or household to the exclusion of the respon-
16 dent or by consent agreement allowing the respondent
17 to provide suitable alternate housing;

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

21 (4) Ordering the respondent to pay to the petitioner
22 a sum for temporary support and maintenance of the
23 abused party. This order is of a temporary nature and,
24 on the sixtieth day following issuance of the order,
25 that portion of the order requiring the respondent to
26 pay support, becomes void unless the beneficiary of
27 that order has filed a petition for divorce with a
28 prayer for temporary support and maintenance under
29 section thirteen, article two of this chapter, or has

30 initiated an action for separate maintenance under
31 section twenty-eight, article two of this chapter. When
32 there is a subsequent ruling on a petition for support
33 under section thirteen, article two of this chapter, that
34 portion of the order requiring the respondent to pay
35 support becomes void;

36 (5) Ordering the respondent to refrain from entering
37 the school, business or place of employment of the
38 petitioner or household members or family members
39 for the purpose of violating the protective order;

40 (6) Directing the parties or a party to participate in
41 counseling; and/or

42 (7) Ordering the respondent to refrain from contact-
43 ing, telephoning, communicating, harassing or verbally
44 abusing the petitioner in any public place.

45 (b) Any protective order shall be for a fixed period
46 of time not to exceed sixty days. The court may amend
47 its order at any time upon subsequent petition filed by
48 either party. If the court enters an initial order for a
49 period of less than sixty days, it shall, after notice and
50 hearing, extend its initial order for the full sixty day
51 period if it finds the petitioner continues to need
52 protection from abuse. The order shall be in full force
53 and effect in every county in this state. The order
54 shall state that it is in full force and effect in every
55 county in this state.

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

58 (d) Certified copies of any order made under the
59 provisions of this article shall be issued to the peti-
60 tioner, the respondent and any law-enforcement
61 agency having jurisdiction to enforce the order or
62 agreement, including the city police, the county
63 sheriff's office or local office of the state police.

§48-2A-9. Recordkeeping 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
7 include:

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

10 (2) The relationship between the parties;

11 (3) The type and extent of abuse;

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

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

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

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

27 (b) The department of public safety shall tabulate
28 and analyze any statistical data derived from the
29 reports made by law-enforcement agencies pursuant
30 to this section, and publish a statistical compilation in
31 the department's annual uniform crime report, as
32 provided for in section twenty-four, article two,
33 chapter fifteen of this code.

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

36 (1) The number of family violence complaints
37 received;

38 (2) The number of complaints investigated;

39 (3) The number of complaints received from alleged

40 victims of each sex;

41 (4) The average time lapse in responding to such
42 complaints;

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

46 (6) The number of aggravated assaults and homi-
47 cides resulting from such repeat incidents;

48 (7) The type of police action taken in disposition of
49 the cases; and

50 (8) The number of alleged violations of orders of
51 protection.

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

60 (e) The governor's committee on crime, delinquency
61 and correction shall develop and promulgate rules for
62 state, county and municipal law-enforcement officers
63 and law-enforcement agencies regarding the duties of
64 law-enforcement officers and law-enforcement agen-
65 cies with respect to domestic violence. The notice of
66 the public hearing on the rules shall be published
67 before the first day of July, one thousand nine
68 hundred ninety-one. Prior to the publication of the
69 proposed rules, the governor's committee on crime,
70 delinquency and correction shall convene a meeting or
71 meetings of an advisory committee to assist in the
72 development of the rules. The advisory committee
73 shall be composed of persons invited by the committee
74 to represent state, county and local law-enforcement
75 agencies and officers, to represent magistrates and
76 court officials, to represent victims of domestic vio-
77 lence, to represent shelters receiving funding pursuant
78 to article two-c of this chapter, and to represent other

79 persons or organizations who, in the discretion of the
80 committee, have an interest in the rules. The rules
81 and the revisions thereof as provided in this section
82 shall be promulgated as legislative rules in accordance
83 with chapter twenty-nine-a of this code.

84 (f) Nothing in this section shall be construed to
85 authorize the inclusion of information contained in a
86 report of an incident of abuse in any local, state,
87 interstate, national or international systems of crimi-
88 nal identification pursuant to section twenty-four,
89 article two, chapter fifteen of this code: *Provided*, That
90 nothing in this section shall prohibit the department of
91 public safety from processing information through its
92 criminal identification bureau with respect to any
93 actual charge 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 respondent, 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 respondent has notice, a
6 copy of such order shall, no later than the close of the
7 next business day, be delivered by the court or the
8 clerk to a local office of the city police, the county
9 sheriff and the West Virginia department of public
10 safety, where it shall be placed in a confidential file,
11 with access provided only to the law-enforcement
12 agency and the respondent named on said order:
13 *Provided*, That upon the expiration of any order issued
14 pursuant to section five or six of this article, any such
15 law-enforcement agency which has any such order on
16 file, shall immediately expunge its confidential file of
17 any reference thereto and destroy all copies of such
18 order in its possession, custody or control. A sworn
19 affidavit may be executed by the party awarded
20 exclusive possession of the residence or household,
21 pursuant to an order entered under subsection (b),
22 section six of this article, and delivered to such law-
23 enforcement agency simultaneously with any such
24 order, giving his or her consent for a law-enforcement

25 officer to enter such residence or household, without
26 a warrant, to enforce such protective order or tempo-
27 rary order. Orders shall be promptly served upon the
28 respondent. Failure to serve shall not stay the effect of
29 a valid order if the respondent has actual notice of the
30 existence and contents of the order.

31 (b) Any person who observes a violation of such
32 order or the violated party may call a local law-
33 enforcement agency, which shall verify the existence
34 of a current order, and shall direct a law-enforcement
35 officer to immediately investigate the alleged violation.

36 (c) Where a law-enforcement officer observes a
37 violation of a valid order, he or she may immediately
38 arrest the subject of the order. In cases of violation of
39 such orders occurring outside the presence of the
40 investigating officer, the petitioner may apply to a
41 court in session in the county in which the violation
42 occurred or the county in which the order was issued
43 for a warrant of arrest. If the court finds probable
44 cause to believe that a valid order has been violated,
45 the court shall issue such warrant for the arrest of the
46 subject of the order wherever he or she may be found.

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

**§48-2A-11. Violation of temporary or protective orders;
criminal penalties.**

1 Any person who shall knowingly and willfully
2 violate the terms of a protective order which provides

3 the relief authorized by subdivision (1), (5) or (7),
4 subsection (a), section six of this article shall be guilty
5 of a misdemeanor, and, upon conviction thereof, shall
6 be confined in the county jail for not more than thirty
7 days, or fined not more than five hundred dollars, or
8 both fined or imprisoned: *Provided*, That any person
9 who shall abuse another person in knowing and willful
10 violation of the terms of a temporary order or protec-
11 tive order issued under the provisions of this article
12 shall be guilty of a misdemeanor, and, upon conviction
13 thereof, shall be confined in the county jail for a
14 period of not less than one day nor more than thirty
15 days, which jail term shall include actual confinement
16 of not less than twenty-four hours, and shall be fined
17 not less than one hundred dollars nor more than five
18 hundred dollars.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1C. BAIL.

§62-1C-17c. Bail in cases of crimes between family or household members.

1 When the offense charged is a crime against a family
2 or household member, it may be a condition of bond
3 that the defendant shall not have any contact whatso-
4 ever, direct or indirect, verbal or physical, with the
5 victim or complainant.

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

Homer Duck
.....
Chairman Senate Committee

Bonnest C. Wade
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Samuel Adams
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Scott Swartzell
.....
President of the Senate

Rollin C. Deane
.....
Speaker House of Delegates

The within *is approved* this the *3rd*
day of *April*, 1991.

Yaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/91

Time 10:35 am