

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

HOUSE BILL No. 2817

(By Delegates Fleischauer, Amores, Laird,
Caputo, Capito, Osborne and Mahan)



Passed March 4, 1998

In Effect Ninety Days from Passage

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FOR

H. B. 2817

(BY DELEGATES FLEISCHAUER, AMORES, LAIRD,
CAPUTO, CAPITO, OSBORNE AND MAHAN)

[Passed March 4, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, three, four, five, six, nine, ten, ten-a, twelve and fourteen, 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 a new section, designated section seven; to amend and reenact sections two, three, four and ten, article two-c of said chapter; to further amend said article by adding thereto eleven new sections, designated sections four-a, four-b, ten-a, thirteen-a, thirteen-b, thirteen-c, sixteen, seventeen, eighteen, nineteen and twenty, all relating generally to domestic or family violence and its treatment and prevention; setting forth legislative findings and purposes; defining certain terms; establishing the venue of proceedings; clarifying provisions relating to full faith and credit; requiring verified petition; authorizing petition to be filed by person who reported or was a witness to domestic or family violence; issuance of protective order; describing terms that may be included in a protective order; prescribing the length of time a protective order may remain in effect; amendment of a protective order; prohibition against mutual

protective orders; safety of the child as a factor in determining visitation; prescribing the conditions for visitation in cases involving domestic or family violence; law enforcement response to domestic or family violence; filing of orders with law enforcement agency; civil contempt alleging violation of an order; registration of protective order; conditions under which arrest is made; defining certain terms used in domestic violence act; establishing the family protection services board; prescribing the duties of the family protection services board; establishing local councils on domestic or family violence; providing for a state public health plan for reducing domestic or family violence; referral of victims by law enforcement officers to available shelters; notice of victims' rights and remedies and services available; publishing of model standards, procedure and curricula concerning domestic or family violence; regulating intervention programs for perpetrators of domestic or family violence; licensing providers of intervention programs for perpetrators of domestic or family violence; providing for training and continuing education in matters involving domestic or family violence for certain state employees, law-enforcement officers, judicial officers and court personnel, and school personnel who are required to report child abuse and neglect; development of curricula for public education.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, nine, ten, ten-a, twelve and fourteen, 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 a new section, designated section seven; that sections two, three, four and ten, article two-c of said chapter be amended and reenacted; and that said article be further amended by adding thereto eleven new sections, designated sections four-a, four-b, ten-a, thirteen-a, thirteen-b, thirteen-c, sixteen, seventeen, eighteen, nineteen and twenty, all to read as follows:

ARTICLE 2A. PREVENTION AND TREATMENT OF DOMESTIC AND FAMILY VIOLENCE.

§48-2A-1. Findings and purposes.

1 (a) The Legislature of this state finds that:

2 (1) No one should be a victim of domestic or family
3 violence. All people have a right to be safe in their homes
4 and in their families;

5 (2) Children are often physically assaulted or witness
6 violence against one of their parents or other family or
7 household members, violence which too often ultimately
8 results in death. These children may suffer deep and
9 lasting emotional harm from victimization and from
10 exposure to domestic or family violence;

11 (3) Domestic or family violence is a major health and
12 law-enforcement problem in this state with enormous costs
13 to the state in both dollars and human lives. It affects
14 people of all racial and ethnic backgrounds and all
15 socioeconomic classes; and

16 (4) Domestic or family violence can be deterred,
17 prevented or reduced by legal intervention that treats this
18 problem with the seriousness that it deserves.

19 (b) This article shall be liberally construed and applied
20 to promote the following purposes:

21 (1) To assure victims of domestic or family violence
22 the maximum protection from abuse that the law can
23 provide;

24 (2) To create a speedy remedy to discourage violence
25 against family or household members with whom the
26 perpetrator of domestic or family violence has continuing
27 contact;

28 (3) To expand the ability of law-enforcement officers
29 to assist victims, to enforce the domestic or family violence
30 law more effectively, and to prevent further abuse;

31 (4) To facilitate equal enforcement of criminal law by
32 deterring and punishing violence against family and
33 household members as diligently as violence committed
34 against strangers;

35 (5) To recognize that domestic or family violence
36 constitutes serious criminal behavior with potentially tragic

37 results and that it will no longer be excused or tolerated;
38 and

39 (6) To recognize that the existence of a former or on-
40 going familial or other relationship should not serve to
41 excuse, explain or mitigate acts of domestic or family
42 violence which are otherwise punishable as crimes under
43 the laws of this state.

§48-2A-2. Definitions.

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

3 (a) "Family violence" "domestic violence", "domestic
4 or family violence", or "abuse" means the occurrence of
5 one or more of the following acts between family or
6 household members, as that term is defined in subsection
7 (b) of this section:

8 (1) Attempting to cause or intentionally, knowingly or
9 recklessly causing physical harm to another with or
10 without dangerous or deadly weapons;

11 (2) Placing another in reasonable apprehension of
12 physical harm;

13 (3) Creating fear of physical harm by harassment,
14 psychological abuse or threatening acts;

15 (4) Committing either sexual assault or sexual abuse as
16 those terms are defined in articles eight-b and eight-d,
17 chapter sixty-one of this code; and

18 (5) Holding, confining, detaining or abducting
19 another person against that person's will.

20 (b) "Family or household member" means current or
21 former spouses, persons living as spouses, persons who
22 formerly resided as spouses, parents, children and
23 stepchildren, current or former sexual or intimate partners,
24 persons who are dating or who have dated, persons who
25 are presently residing or cohabiting together or in the past
26 have resided or cohabited together or a person with whom
27 the victim has a child in common.

28 (c) "Program for victims of domestic or family
29 violence" means a licensed program for victims of
30 domestic or family violence and their children, which
31 program provides advocacy, shelter, crisis intervention,
32 social services, treatment, counseling, education or
33 training.

34 (d) "Program of intervention for perpetrators" means a
35 licensed program, where available, or if no licensed
36 program is available, a program that:

37 (1) Accepts perpetrators of domestic or family
38 violence into educational intervention groups or
39 counseling pursuant to a court order; or

40 (2) Offers educational intervention groups to
41 perpetrators of domestic or family violence.

**§48-2A-3. Jurisdiction; venue; effect of petitioner's leaving
residence; priority of petitions filed under this
article; who may file; full faith and credit;
process.**

1 (a) *Jurisdiction.* — Circuit courts and magistrate
2 courts, as constituted under chapter fifty of this code, have
3 concurrent jurisdiction over proceedings under this article.

4 (b) *Venue.* — The action may be heard in the county
5 in which the domestic or family violence occurred, in the
6 county in which the respondent is living or in the county
7 in which the petitioner is living, either temporarily or
8 permanently. If the parties are married to each other, the
9 action may also be brought in the county in which an
10 action for divorce between the parties may be brought as
11 provided by section eight, article two of this chapter.

12 (c) *Petitioner's rights.* — The petitioner's right to relief
13 under this article shall not be affected by his or her
14 leaving a residence or household to avoid further abuse.

15 (d) *Priority of petitions.* — Any petition filed under
16 the provisions of this article shall be given priority over
17 any other civil action before the court, except actions in
18 which trial is in progress, and shall be docketed
19 immediately upon filing. Any appeal to the circuit court

20 of a magistrate's judgment on a petition for relief under
21 this article shall be heard within ten working days of the
22 filing of the appeal.

23 (e) *Full faith and credit.* — Any temporary or final
24 protective order issued pursuant to this article shall be
25 effective throughout the state in every county. Any
26 protective order issued by any other state, territory or
27 possession of the United States, Puerto Rico, the District of
28 Columbia or Indian tribe shall be accorded full faith and
29 credit and enforced as if it were an order of this state
30 whether or not such relief is available in this state. A
31 protective order from another jurisdiction is presumed to
32 be valid if the order appears authentic on its face and shall
33 be enforced in this state. If the validity of the order is
34 contested, the court or law enforcement to which the order
35 is presented shall, prior to the final hearing, determine the
36 existence, validity and terms of such order in the issuing
37 jurisdiction. A protective order from another jurisdiction
38 may be enforced even if the order is not entered into the
39 state law enforcement information system described by
40 section twelve of this article.

41 (f) *Service by publication.* — A protective order may
42 be served on the respondent by means of a Class I legal
43 advertisement published notice, with the publication area
44 being the county in which the respondent resides,
45 published in accordance with the provisions of section two,
46 article three, chapter fifty-nine of this code if: (i) The
47 petitioner files an affidavit with the court stating that an
48 attempt at personal service pursuant to rule four of the
49 West Virginia rules of civil procedure has been
50 unsuccessful or evidence is adduced at the hearing for the
51 protective order that the respondent has left the state of
52 West Virginia; and (ii) a copy of the order is mailed by
53 certified or registered mail to the respondent at the
54 respondent's last known residence and returned
55 undelivered.

**§48-2A-4. Commencement of proceeding; forms; counter-
claim; accompanying persons.**

1 (a) No person shall be refused the right to file a
2 petition under the provisions of this article. No person

3 shall be denied relief under the provisions of this article if
4 she or he presents facts sufficient under the provisions of
5 this article for the relief sought. The petition shall be
6 verified.

7 A petition for a protective order may be filed by:

8 (1) A person seeking relief under this article for
9 herself or himself;

10 (2) An adult family or household member for the
11 protection of the victim or for any family or household
12 member who is a minor child or physically or mentally
13 incapacitated to the extent that he or she cannot file on his
14 or her own behalf, or

15 (3) A person who reported or was a witness to
16 domestic or family violence and who, as a result, has been
17 abused, threatened, harassed or who has been the subject
18 of other actions intended to intimidate the person.

19 (b) The West Virginia supreme court of appeals shall
20 prescribe forms which are necessary and convenient for
21 proceedings pursuant to this article, and the court shall
22 distribute such forms to the clerk of the circuit court and
23 magistrate court of each county within the state.

24 (c) The respondent named in any petition alleging
25 domestic or family violence may file a counterclaim or
26 raise any affirmative defenses.

27 (d) No person accompanying a person who is seeking
28 to file a petition under the provisions of this article is
29 precluded from being present if his or her presence is
30 desired by the person seeking a petition unless the
31 person's behavior is disruptive to the proceeding.

32 (e) No fees shall be charged for the filing of petitions
33 or other papers, service of petitions or orders, copies of
34 orders, or other costs for services provided by, or
35 associated with, any proceedings under this article until the
36 matter is brought before the court for final resolution.

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

1 (a) Upon filing of a verified petition under this article,
2 the court may enter such temporary orders as it may deem
3 necessary to protect the petitioner or minor children from
4 domestic or family violence and, upon good cause shown,
5 may do so ex parte without the necessity of bond being
6 given by the petitioner. Clear and convincing evidence of
7 immediate and present danger of abuse to the petitioner or
8 minor children shall constitute good cause for the issuance
9 of an ex parte order pursuant to this section. If the
10 respondent is not present at the proceeding, the petitioner
11 or the petitioner's legal representative shall certify to the
12 court, in writing, the efforts which have been made to give
13 notice to the respondent or just cause why notice should
14 not be required. Copies of medical reports or records
15 may be admitted into evidence to the same extent as
16 though the original thereof. The custodian of such
17 records shall not be required to be present to authenticate
18 such records for any proceeding held pursuant to this
19 subsection. Following such proceeding, the court shall
20 order a copy of the petition to be served immediately
21 upon the respondent, together with a copy of any
22 temporary order issued pursuant to the proceedings,
23 notice setting forth the time and place of the full hearing
24 and a statement of the right of the respondent to be
25 present and to be represented by counsel. Copies of any
26 order made under the provisions of this section shall also
27 be issued to the petitioner and any law-enforcement
28 agency having jurisdiction to enforce the order, including
29 the city police, the county sheriff's office and local office
30 of the state police within twenty-four hours of the entry of
31 the order. A temporary protective order shall remain
32 effective until such time as a hearing is held and shall be
33 in full force and effect in every county in this state.

34 (b) Within five days following the issuance of the
35 court's temporary order, a full hearing shall be held at
36 which the petitioner must prove the allegation of domestic
37 or family violence, or that he or she reported or witnessed
38 domestic violence against another and has, as a result, been
39 abused, threatened, harassed or has been the subject of
40 other actions to attempt to intimidate him or her, by a
41 preponderance of the evidence, or such petition shall be

42 dismissed. If the respondent has not been served with
43 notice of the temporary order, the hearing may be
44 continued in order to permit service to be effected. The
45 failure to obtain service upon the respondent does not
46 constitute a basis for dismissing the petition. Copies of
47 medical reports may be admitted into evidence to the same
48 extent as though the original thereof, upon proper
49 authentication, by the custodian of such records.

50 (c) No person requested by a party to be present
51 during a hearing held under the provisions of this article
52 shall be precluded from being present unless such person
53 is to be a witness in the proceeding and a motion for
54 sequestration has been made and such motion has been
55 granted. A person found by the court to be disruptive
56 may be precluded from being present.

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

§48-2A-6. Protective orders.

1 (a) At the conclusion of the hearing, if the petitioner
2 has proven the allegations of domestic or family violence,
3 or that he or she reported or witnessed domestic or family
4 violence against another and has, as a result, been abused,
5 threatened, harassed or has been the subject of other
6 actions to attempt to intimidate him or her, by a
7 preponderance of the evidence, the court shall issue a
8 protective order directing the respondent to refrain from
9 abusing, harassing, stalking, threatening or otherwise
10 intimidating the petitioner, the person who reported or
11 witnessed family or domestic violence or the minor
12 children, or engaging in other conduct that would place
13 the petitioner, the person who reported or witnessed family
14 or domestic violence or the minor children in reasonable
15 fear of bodily injury. Where the respondent is present at
16 the hearing and elects not to contest the allegations of
17 domestic or family violence or does not contest the relief
18 sought, the petitioner is not required to adduce evidence
19 and prove the allegations of domestic or family violence
20 and the court may directly address the issues of the relief
21 requested.

22 (b) Where the petitioner is the victim of domestic or
23 family violence, the terms of a protective order may
24 include:

25 (1) Granting possession to the petitioner of the
26 residence or household jointly resided in at the time the
27 abuse occurred;

28 (2) Awarding temporary custody of or establishing
29 temporary visitation rights with regard to minor children
30 named in the order;

31 (3) Establishing terms of temporary visitation with
32 regard to the minor children named in the order
33 including, but not limited to, requiring third party
34 supervision of visitations if necessary to protect the
35 petitioner and/or the minor children;

36 (4) Ordering the noncustodial parent to pay to the
37 custodial parent a sum for temporary support and
38 maintenance of the petitioner and children, if any;

39 (5) Ordering the respondent to pay to the petitioner a
40 sum for temporary support and maintenance of the
41 petitioner, where appropriate;

42 (6) Ordering the respondent to refrain from entering
43 the school, business or place of employment of the
44 petitioner or household or family members for the
45 purpose of violating the protective order;

46 (7) Ordering the respondent to participate in an
47 intervention program for perpetrators;

48 (8) Ordering the respondent to refrain from
49 contacting, telephoning, communicating, harassing or
50 verbally abusing the petitioner

51 (9) Providing for either party to obtain personal
52 property or other items from a location, including
53 granting temporary possession of motor vehicles owned
54 by either or both of the parties, and providing for the
55 safety of the parties while this occurs, including ordering a
56 law enforcement officer to accompany one or both of the
57 parties.

58 (10) Prohibiting the respondent from using or
59 possessing a firearm or other weapon, notwithstanding the
60 fact that the respondent has a valid license to possess such
61 firearm or other weapon;

62 (11) Informing the respondent that possession of a
63 firearm while subject to a protective order is a violation of
64 federal law.

65 (12) Ordering the respondent to reimburse the
66 petitioner or other person for any expenses incurred as a
67 result of the domestic or family violence, including, but
68 not limited to, medical expenses, transportation and
69 shelter; and

70 (13) Ordering the petitioner and respondent to refrain
71 from transferring, conveying, alienating, encumbering, or
72 otherwise dealing with property which could otherwise be
73 subject to the jurisdiction of the court or another court in
74 an action for divorce or support, partition or in any other
75 action affecting their interests in property.

76 (c) Where the petitioner or other person to be
77 protected reported or was a witness to the family or
78 domestic violence, the terms of a protective order may
79 include:

80 (1) Ordering the respondent to refrain from abusing,
81 contacting, telephoning, communicating, harassing,
82 verbally abusing or otherwise intimidating the petitioner
83 or other person to be protected.

84 (2) Ordering the respondent to refrain from entering
85 the school, business or place of employment of the
86 petitioner or other person to be protected, for the purpose
87 of violating the protective order.

88 (d) Except as otherwise provided by subsection (d),
89 section three-a of this article, a final protective order
90 issued by a magistrate, family law master or circuit judge
91 pursuant to this article or subdivision thirteen, subsection
92 (a), article two of this chapter, is effective for either ninety
93 days or one hundred eighty days, in the discretion of the
94 court. If the court enters an order for a period of ninety
95 days, upon receipt of a written request from the petitioner

96 prior to the expiration of the ninety day period, the court
97 shall extend its order for an additional ninety-day period.

98 (e) To be effective, a written request to extend an
99 order from ninety days to one hundred eighty days must
100 be submitted to the court prior to the expiration of the
101 original ninety-day period. A notice of the extension
102 shall be sent by the clerk of the court to the respondent by
103 first class mail, addressed to the last known address of the
104 respondent as indicated by the court's case filings. The
105 extension of time is effective upon mailing of the notice.

106 (f) The court may amend the terms of a protective
107 order at any time upon subsequent petition filed by either
108 party. The protective order shall be in full force and
109 effect in every county of this state and shall so state.

110 (g) No order under this article shall in any manner
111 affect title to any real property.

112 (h) Certified copies of any order or extension notice
113 made under the provisions of this section shall be issued to
114 the petitioner, the respondent and any law-enforcement
115 agency having jurisdiction to enforce the order, including
116 the city police, the county sheriff's office or local office of
117 the West Virginia state police within twenty-four hours of
118 the entry of the order.

119 (i) Mutual protective orders are prohibited unless both
120 parties have filed a petition under section four of this
121 article and have proven the allegations of domestic or
122 family violence by a preponderance of the evidence. This
123 shall not prevent other persons, including the respondent,
124 from filing a separate petition. The court may consolidate
125 two or more petitions if he or she determines that
126 consolidation will further the interests of justice and
127 judicial economy. The court shall enter a separate order
128 for each petition filed.

129 (j) Any protective order issued pursuant to this article
130 shall contain on its face the following statement, printed in
131 bold faced type or in capital letters:

132 **"VIOLATION OF THIS ORDER MAY BE**
133 **PUNISHED BY CONFINEMENT IN A REGIONAL**

134 **OR COUNTY JAIL FOR AS LONG AS ONE YEAR**
135 **AND BY A FINE OF AS MUCH AS TWO**
136 **THOUSAND DOLLARS".**

**§48-2A-7. Conditions of visitation in cases involving domestic
or family violence.**

1 (a) A court may award visitation of a child by a parent
2 who has committed domestic or family violence only if
3 the court finds that adequate provision for the safety of
4 the child and the petitioner can be made.

5 (b) In a visitation order, a court may:

6 (1) Order an exchange of a child to occur in a
7 protected setting;

8 (2) Order that supervision be provided by another
9 person or agency;

10 (3) Order the perpetrator of domestic or family
11 violence to attend and complete, to the satisfaction of the
12 court, a program of intervention for perpetrators as a
13 condition of the visitation;

14 (4) Order the perpetrator of domestic or family
15 violence to abstain from possession or consumption of
16 alcohol or controlled substances during the visitation and
17 for the twelve hours that precede the visitation;

18 (5) Order the perpetrator of domestic or family
19 violence to pay the costs of supervised visitation, if any;

20 (6) Prohibit overnight visitation;

21 (7) Impose any other condition that the court
22 considers necessary to provide for the safety of the child,
23 the petitioner or any other family or household member.

24 (c) Regardless of whether visitation is allowed, the
25 court may order that the address of the child and the
26 petitioner be kept confidential.

27 (d) If a court allows a family or household member to
28 supervise visitation, the court shall establish conditions to
29 be followed during visitation.

§48-2A-9. Law enforcement response to domestic or family violence.

1 (a) Notwithstanding any other provision of this code
2 to the contrary, all law-enforcement officers are hereby
3 authorized to serve all pleadings and orders filed or
4 entered pursuant to this article on Sundays and legal
5 holidays. No law-enforcement officer shall refuse to serve
6 any pleadings or orders entered pursuant to this article.

7 (b) Any law-enforcement officer responding to an
8 alleged incident of domestic or family violence shall
9 inform the parties thereto of the availability of the possible
10 remedies provided by this article and the possible
11 applicability of the criminal laws of this state. Any law-
12 enforcement officer investigating an alleged incident of
13 domestic or family violence shall advise the victim of such
14 violence of the availability of the family protection shelter
15 to which such person may be admitted.

16 (c) Any law-enforcement officer responding to an
17 alleged incident of domestic or family violence shall, in
18 addition to providing the information required in
19 subsection (a) of this section, provide transportation for or
20 facilitate transportation of the victim or victims, upon the
21 request of such victim or victims, to a shelter or the
22 appropriate court where there is reasonable cause to
23 believe that such victim or victims have suffered or are
24 likely to suffer physical injury.

25 (d) Each law-enforcement agency shall maintain
26 records on all incidents of domestic or family violence
27 reported to it and shall monthly make and deliver to the
28 West Virginia state police a report on a form prescribed by
29 the state police, listing all such incidents of domestic or
30 family violence. Such reports shall include:

31 (1) The age and sex of the victim and the perpetrator
32 of domestic or family violence;

33 (2) The relationship between the parties;

34 (3) The type and extent of abuse;

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

36 (5) Whether the law-enforcement agency responded to
37 the complaint and if so, the time involved, the action taken
38 and the time lapse between the agency's action and the
39 victim's request for assistance;

40 (6) Whether any prior reports have been made,
41 received or filed regarding domestic or family violence on
42 any prior occasion and if so, the number of such prior
43 reports; and

44 (7) The effective dates and terms of any protective
45 order issued prior to or following the incident to protect
46 the victim: *Provided*, That no information which will
47 permit the identification of the parties involved in any
48 incident of domestic or family violence shall be included
49 in such report.

50 (e) The West Virginia state police shall tabulate and
51 analyze any statistical data derived from the reports made
52 by law-enforcement agencies pursuant to this section and
53 publish a statistical compilation in its annual uniform
54 crime report, as provided for in section twenty-four, article
55 two, chapter fifteen of this code. The statistical
56 compilation shall include, but is not limited to, the
57 following:

58 (1) The number of domestic or family violence
59 complaints received;

60 (2) The number of complaints investigated;

61 (3) The number of complaints received from alleged
62 victims of each sex;

63 (4) The average time lapse in responding to such
64 complaints;

65 (5) The number of complaints received from alleged
66 victims who have filed such complaints on prior occasions;

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

69 (7) The type of police action taken in disposition of
70 the cases; and

71 (8) The number of alleged violations of protective
72 orders.

73 (f) As used in this section, the terms "abuse", "family
74 violence" and "family or household members" shall have
75 the meanings given them in section two of this article; and
76 the term "law-enforcement agency" shall include the West
77 Virginia department of health and human resources in
78 those instances of child abuse reported to the department
79 which are not otherwise reported to any other law-
80 enforcement agency.

81 (g) The governor's committee on crime, delinquency
82 and correction shall develop and promulgate rules for
83 state, county and municipal law-enforcement officers and
84 law-enforcement agencies with regard to domestic
85 violence. The notice of the public hearing on the rules
86 shall be published before the first day of July, one
87 thousand nine hundred ninety-one. Prior to the
88 publication of the proposed rules, the governor's
89 committee on crime, delinquency and correction shall
90 convene a meeting or meetings of an advisory committee
91 to assist in the development of the rules. The advisory
92 committee shall be composed of persons invited by the
93 committee to represent state, county and local law-
94 enforcement agencies and officers, to represent
95 magistrates and court officials, to represent victims of
96 domestic or family violence, to represent shelters receiving
97 funding pursuant to article two-c of this chapter and to
98 represent other persons or organizations who, in the
99 discretion of the committee, have an interest in the rules.
100 The rules and the revisions thereof as provided in this
101 section shall be promulgated as legislative rules in
102 accordance with chapter twenty-nine-a of this code.
103 Following the promulgation of said rules, the committee
104 shall meet at least annually to review the rules and to
105 propose revisions as a result of changes in law or policy.

106 (h) Nothing in this section shall be construed to
107 authorize the inclusion of information contained in a
108 report of an incident of abuse in any local, state, interstate,
109 national or international systems of criminal identification
110 pursuant to section twenty-four, article two, chapter fifteen

111 of this code: *Provided*, That nothing in this section shall
112 prohibit the West Virginia state police from processing
113 information through its criminal identification bureau with
114 respect to any actual charge or conviction of a crime.

115 (i) All law-enforcement officers shall receive training
116 relating to response to calls involving domestic or family
117 violence by the first day of October, one thousand nine
118 hundred ninety-three.

119 (j) Two years after the entry of a final protective order,
120 the circuit court, may, upon motion, order that the
121 protective order and references to the order be purged
122 from the file maintained by any law-enforcement agency
123 and may further order that the file maintained by the
124 court be sealed and not opened except upon order of the
125 court when such is in the interest of justice.

§48-2A-10. Filing of orders with law-enforcement agency.

1 Upon entry of an order pursuant to section five or six
2 of this article, or an order entered pursuant to section
3 thirteen, article two of this chapter granting relief provided
4 for by this article, a copy of the order shall, no later than
5 the close of the next business day, be transmitted by the
6 court or the clerk of the court to a local office of the city
7 police, the county sheriff and the West Virginia state
8 police, where it shall be placed in a confidential file, with
9 access provided only to the law-enforcement agency and
10 the respondent named on the order. A sworn affidavit
11 may be executed by a party who has been awarded
12 exclusive possession of the residence or household,
13 pursuant to an order entered under subsection (b), section
14 six of this article, and shall be delivered to such law-
15 enforcement agencies simultaneously with any order,
16 giving his or her consent for a law-enforcement officer to
17 enter the residence or household, without a warrant, to
18 enforce the protective order or temporary order. Orders
19 shall be promptly served upon the respondent. Failure to
20 serve a protective order does not stay the effect of a valid
21 order if the respondent has actual notice of the existence
22 and contents of the order.

§48-2A-10a. Civil contempt; violation of protective orders; order to show cause.

1 (a) Any party to a protective order or a legal guardian
2 or guardian ad litem may file a petition for civil contempt
3 alleging a violation of an order issued pursuant to the
4 provisions of this article. Such petition shall be filed in a
5 court in the county in which the violation occurred or the
6 county in which the order was issued.

7 (b) When a petition for an order to show cause is filed,
8 a hearing on the petition shall be held within five days
9 from the filing of the petition. Any order to show cause
10 which is issued shall be served upon the alleged violator.

11 (c) Upon a finding of contempt, the court may order
12 the violator to comply with specific provisions of the
13 protective order and post a bond as surety for faithful
14 compliance with such order.

§48-2A-12. Registration of order.

1 (a) The West Virginia state police shall maintain a
2 registry in which it shall enter certified copies of orders
3 entered by courts from every county in this state pursuant
4 to the provisions of this article, or from other jurisdictions
5 pursuant to their laws: *Provided*, That the provisions of
6 this subsection are not effective until a central automated
7 record system is developed.

8 (b) A petitioner who obtains a protective order
9 pursuant to this article, or from another jurisdiction
10 pursuant to its law, may register that order in any county
11 within this state where the petitioner believes enforcement
12 may be necessary.

13 (c) A protective order may be registered by the
14 petitioner in a county other than the issuing county by
15 obtaining a copy of the order of the issuing court,
16 certified by the clerk of that court, and presenting that
17 certified order to the local office of the West Virginia state
18 police where the order is to be registered.

19 (d) Upon receipt of a certified order for registration,
20 the local office of the state police shall provide certified

21 copies to any law-enforcement agency within its
22 jurisdiction, including the city police and the county
23 sheriff's office.

24 (e) Nothing in this section precludes the enforcement
25 of an order in a county other than the county or
26 jurisdiction in which the order was issued, if the petitioner
27 has not registered the order in the county in which an
28 alleged violation of the order occurs.

§48-2A-14. Arrest in domestic violence matters; conditions.

1 (a) Notwithstanding any provision of this code to the
2 contrary, if a person is alleged to have committed a
3 violation of the provisions of subsection (a) or (b), section
4 twenty-eight, article two, chapter sixty-one of this code
5 against a family or household member, in addition to any
6 other authority to arrest granted by this code, a
7 law-enforcement officer has authority to arrest that person
8 without first obtaining a warrant if:

9 (1) The law-enforcement officer has observed credible
10 corroborative evidence that an offense has occurred; and
11 either:

12 (2) The law-enforcement officer has received, from
13 the victim or a witness, an oral or written allegation of facts
14 constituting a violation of section twenty-eight, article two,
15 chapter sixty-one of this code; or

16 (3) The law-enforcement officer has observed credible
17 evidence that the accused committed the offense.

18 (b) For purposes of this section, credible corroborative
19 evidence means evidence that is worthy of belief and
20 corresponds to the allegations of one or more elements of
21 the offense and may include, but is not limited to, the
22 following:

23 (1) *Condition of the alleged victim.* — One or more
24 contusions, scratches, cuts, abrasions, or swellings; missing
25 hair; torn clothing or clothing in disarray consistent with a
26 struggle; observable difficulty in breathing or
27 breathlessness consistent with the effects of choking or a
28 body blow; observable difficulty in movement consistent

29 with the effects of a body blow or other unlawful physical
30 contact.

31 (2) *Condition of the accused.* — Physical injury or
32 other conditions similar to those set out for the condition
33 of the victim which are consistent with the alleged offense
34 or alleged acts of self-defense by the victim.

35 (3) *Condition of the scene.* — Damaged premises or
36 furnishings; disarray or misplaced objects consistent with
37 the effects of a struggle.

38 (4) *Other conditions.* — Statements by the accused
39 admitting one or more elements of the offense; threats
40 made by the accused in the presence of an officer; audible
41 evidence of a disturbance heard by the dispatcher or other
42 agent receiving the request for police assistance; written
43 statements by witnesses.

44 (c) Whenever any person is arrested pursuant to
45 subsection (a) of this section, the arrested person shall be
46 taken before a magistrate within the county in which the
47 offense charged is alleged to have been committed in a
48 manner consistent with the provisions of Rule 1 of the
49 Administrative Rules for the Magistrate Courts of West
50 Virginia.

51 (d) If an arrest for a violation of subsection (c), section
52 twenty-eight, article two, chapter sixty-one of this code is
53 authorized pursuant to this section, that fact constitutes
54 prima facie evidence that the accused constitutes a threat
55 or danger to the victim or other family or household
56 members for the purpose of setting conditions of bail
57 pursuant to section seventeen-c, article one-c, chapter
58 sixty-two of this code.

59 (e) Whenever any person is arrested pursuant to the
60 provisions of this article or for a violation of an order
61 issued pursuant to subdivision (12), subsection (a), section
62 thirteen, article two of this chapter, the arresting officer:

63 (1) Shall seize all weapons that are alleged to have
64 been involved or threatened to be used in the commission
65 of domestic or family violence; and

66 (2) May seize a weapon that is in plain view of the
67 officer or was discovered pursuant to a consensual search,
68 as necessary for the protection of the officer or other
69 persons.

ARTICLE 2C. DOMESTIC VIOLENCE ACT.

§48-2C-2. Definitions.

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

3 (a) "Board" means the family protection services board
4 created pursuant to section three of this article;

5 (b) "Department" means the department of health and
6 human resources or any successor agency however so
7 named;

8 (c) "Shelter" or "Family Protection Shelter" means a
9 licensed domestic or family violence shelter created for
10 the purpose of receiving, on a temporary basis, persons
11 who are victims of domestic violence, abuse or rape as well
12 as the children of such victims;

13 (d) "Secretary" means the secretary of the
14 department of health and human resources; and

15 (e) "Family protection program" or "program" means
16 a licensed domestic or family violence program offered
17 by a locally controlled organization primarily for the
18 purpose of providing services to victims of domestic or
19 family violence or abuse and their children.

**§48-2C-3. Family protection services board; members;
purposes.**

1 (a) There is hereby created a family protection
2 services board to consist of five persons. The governor,
3 with the advice and consent of the Senate, shall appoint
4 three members of the board. One such member shall be a
5 director of a shelter. One member shall be a member of a
6 major trade association which represents shelters across the
7 state. The final gubernatorial appointee shall be a
8 member of the public. The other two members shall be
9 the secretary of the department of health and human

10 resources, or his or her designee, and the chair of the
11 governor's committee on crime, delinquency and
12 correction, or his or her designee.

13 (b) The terms of the three members appointed by the
14 governor shall be staggered terms of three years. In the
15 case of the initial appointments, the director of the shelter
16 shall serve a one-year term, the representative of the trade
17 association shall serve a two-year term and the appointed
18 member of the public shall serve a three-year term.

19 (c) In the event that a member of the board ceases to
20 be qualified for appointment, then his or her appointment
21 shall terminate.

§48-2C-4. Duties of board.

1 It is the duty of the board to:

2 (a) Regulate its procedural practice;

3 (b) Receive and consider applications for the
4 development of shelters;

5 (c) Facilitate the formation and operation of shelters;

6 (d) Promulgate rules and regulations to implement the
7 provisions of this article and any applicable federal
8 guidelines;

9 (e) Advise the secretary on matters of concern relative
10 to his or her responsibilities under this article;

11 (f) Study issues pertinent to family protection shelters,
12 programs for domestic violence victims, and report the
13 results to the governor and the Legislature;

14 (g) Conduct hearings as necessary under this article;

15 (h) Delegate to the secretary such powers and duties of
16 the board as the board may deem appropriate to delegate,
17 including, but not limited to, the authority to approve,
18 disapprove, revoke or suspend licenses;

19 (i) Deliver funds to shelters within forty-five days of
20 the approval of a proposal for such shelters;

21 (j) Establish a system of peer review which will ensure
22 the safety, well being and health of the clients of all
23 shelters operating in the state;

24 (k) Evaluate annually each funded shelter to
25 determine its compliance with the goals and objectives set
26 out in its original application for funding or subsequent
27 revisions;

28 (l) To award to shelters, for each fiscal year, ninety-
29 five percent of the total funds collected and paid over
30 during the fiscal year to the special revenue account
31 established pursuant to section twenty-four, article one of
32 this chapter and to expend, during said period a sum not
33 in excess of five percent of said funds for cost of
34 administering provisions of this article;

35 (m) Establish and enforce system of standards for
36 annual licensure for all shelters and programs in the state;

37 (n) Enforce standards; and

38 (o) Review its rules and regulations biannually.

§48-2C-4a. Establishment of local councils authorized.

1 (a) A local government, a county or a combination
2 thereof may establish an advisory council on domestic or
3 family violence.

4 (b) The purpose of a local advisory council is to
5 increase the awareness and understanding of domestic or
6 family violence and its consequences and to reduce the
7 incidence of domestic or family violence within the
8 locality by:

9 (1) Promoting effective strategies for identification of
10 the existence of domestic or family violence and
11 intervention by public and private agencies serving
12 persons who are victims of domestic or family violence;

13 (2) Providing for public education;

14 (3) Facilitating communication among public and
15 private agencies that provide programs to assist victims
16 and programs of intervention for perpetrators;

17 (4) Providing assistance to public and private agencies
18 and providers of services to develop statewide procedures
19 and community and staff education, including procedures
20 to review fatalities; and

21 (5) Developing a comprehensive plan of data
22 collection concerning domestic or family violence in
23 cooperation with courts, prosecutors, law-enforcement
24 officers, health care practitioners and other local agencies,
25 in a manner that protects the identity of victims of
26 domestic or family violence. Nothing contained in this
27 subdivision shall be construed to modify or diminish any
28 existing law relating to the confidentiality of records.

§48-2C-4b. State public health plan for reducing domestic or family violence.

1 (a) The bureau for public health of the department of
2 health and human resources, in consultation with the
3 family protection services board, shall:

4 (1) Assess the impact of domestic or family violence
5 on public health; and

6 (2) Write a state public health plan for reducing the
7 incidence of domestic or family violence in this state.

8 (b) The state public health plan shall:

9 (1) Include, but not be limited to, public education,
10 including the use of the various communication media to
11 set forth the public health perspective on domestic or
12 family violence;

13 (2) Be developed in consultation with public and
14 private agencies that provide programs for victims of
15 domestic or family violence, advocates for victims,
16 organizations representing the interests of shelters, and
17 persons who have demonstrated expertise and experience
18 in providing health care to victims of domestic or family
19 violence and their children; and

20 (3) Be completed on or before the first day of
21 January, two thousand.

22 (c) The bureau for public health of the department of
23 health and human resources shall:

24 (1) Transmit a copy of the state public health plan to
25 the governor and the Legislature; and

26 (2) Review and update the state public health plan
27 annually.

§48-2C-10. Referral to shelters by officers.

1 Where shelters are available, the law-enforcement
2 officer or other public authority investigating an alleged
3 incident of domestic or family violence shall advise the
4 victim of the availability of the family protection shelter to
5 which that person may be admitted.

§48-2C-10a. Notice of victims' rights, remedies and available services; required information.

1 (a) The bureau for public health of the department of
2 health and human resources shall make available to
3 health-care facilities and practitioners a written form
4 notice of the rights of victims and the remedies and
5 services available to victims of domestic or family
6 violence.

7 (b) A health care practitioner whose patient has
8 injuries or conditions consistent with domestic violence
9 shall provide to the patient, and every health care facility
10 shall make available to all patients, a written form notice of
11 the rights of victims and the remedies and services
12 available to victims of domestic or family violence.

§48-2C-13a. Standards, procedures and curricula.

1 (a) The bureau for public health of the department of
2 health and human resources shall publish model standards,
3 including specialized procedures and curricula,
4 concerning domestic or family violence for health care
5 facilities, practitioners and personnel.

6 (b) The procedures and curricula shall be developed
7 in consultation with public and private agencies that
8 provide programs for victims of domestic or family
9 violence, advocates for victims, organizations representing
10 the interests of shelters, and personnel who have
11 demonstrated expertise and experience in providing health

12 care to victims of domestic or family violence and their
13 children.

§48-2C-13b. Regulation of intervention programs for perpetrators; required provisions; duties of providers.

1 (a) The family protection services board shall propose
2 legislative rules governing the minimum level of
3 responsibility, service and accountability expected from
4 providers of programs of intervention for perpetrators of
5 domestic and family violence. These rules shall be
6 proposed for promulgation in accordance with the
7 provisions of article three, chapter twenty-nine-a of this
8 code. These rules shall be developed in consultation with
9 public and private agencies that provide programs for
10 victims of domestic or family violence and programs of
11 intervention for perpetrators, with advocates for victims,
12 with organizations that represent the interests of shelters,
13 and with persons who have demonstrated expertise and
14 experience in providing services to victims and
15 perpetrators of domestic and family violence and their
16 children. If a program of intervention for perpetrators
17 receives funds from the state or is licensed by the state, the
18 board shall review the program's compliance with the
19 rules promulgated pursuant to this subsection.

20 (b) The rules for programs for intervention for
21 perpetrators of domestic or family violence shall include:

22 (1) Criteria concerning a perpetrator's appropriateness
23 for the program;

24 (2) Systems for communication and evaluation among
25 the referring court, the public and private agencies that
26 provide programs for victims of domestic or family
27 violence and the programs of intervention for
28 perpetrators; and

29 (4) Required qualifications concerning education,
30 training and experience for providers of intervention
31 programs.

32 (c) The standards shall be based upon and incorporate
33 the following principles:

34 (1) The focus of a program is to end the acts of
35 violence and ensure the safety of the victim and any
36 children or other family or household members;

37 (2) Domestic or family violence constitutes behavior
38 for which the perpetrator is accountable; and

39 (3) Although alcohol and substance abuse often
40 exacerbate domestic or family violence, it is a separate
41 problem which requires specialized intervention or
42 treatment.

43 (d) Providers of perpetrator intervention programs:

44 (1) Shall require participants to sign the following
45 releases:

46 (A) Allowing the provider to inform the victim and the
47 victim's advocates that the perpetrator is participating in a
48 batterers' intervention prevention program with the
49 provider and to provide information to the victim and the
50 victim's advocates, if necessary, for the victim's safety;

51 (B) Allowing prior and current treating agencies to
52 provide information about the perpetrator to the provider;
53 and

54 (C) Allowing the provider, for good cause, to provide
55 information about the perpetrator to relevant legal entities,
56 including courts, parole officers, probation officers and
57 child protective services.

58 (2) Shall report to the court, if the participation was
59 court ordered, and to the victim, if the victim requests and
60 provides a method of notification, any assault, failure to
61 comply with program requirements, failure to attend the
62 program and threat of harm by the perpetrator.

63 (3) Shall report to the victim, without the participant's
64 authorization, all threats of harm.

65 (4) May report to the victim, without the participant's
66 authorization, the participant's failure to attend.

**§48-2C-13c. Licensing providers of intervention programs for
perpetrators.**

1 (a) The board shall establish an application for
2 licensure for all providers of programs of intervention for
3 perpetrators in accordance with section thirteen-b of this
4 article.

5 (b) Licenses may be renewed on an annual basis with
6 all such licenses having a term of one year commencing
7 on the first day of July and terminating on the thirtieth
8 day of June on the next year.

9 (c) The board shall grant or deny any license within
10 forty-five days of the receipt of the application.

11 (d) The license granted by the board shall be
12 conspicuously displayed by the licensees.

13 (e) The board may grant a provisional license or
14 grant a waiver of licensure if the board deems such waiver
15 or provisional license necessary for the operation of a
16 program. All such waivers or provisional licenses shall be
17 reviewed semi-annually.

§48-2C-16. Continuing education for certain state employees.

1 (a)(1) Subject to the provisions of subdivision (2) of
2 this subsection, the department of health and human
3 resources shall provide or require continuing education
4 concerning domestic or family violence for child
5 protective services workers, adult protective services
6 workers, social services workers, family support workers
7 and workers in the child support enforcement division.

8 (2) Funding for the continuing education provided or
9 required under subdivision (1) of this section may not
10 exceed the amounts allocated for that purpose by the
11 spending unit from existing appropriations. No provision
12 of this section may be construed to require the Legislature
13 to make any appropriation.

14 (b) The courses or requirements shall be prepared and
15 presented in consultation with public and private agencies
16 that provide programs for victims of domestic or family
17 violence or programs of intervention for perpetrators,
18 advocates for victims, organizations representing the

19 interests of shelters, and the family protection services
20 board.

**§48-2C-17. Continuing education for law-enforcement officers
concerning domestic or family violence.**

1 (a)(1) Subject to the provisions of subdivision (2) of
2 this subsection, as a part of the initial law enforcement
3 officer training required before a person may be
4 employed as a law enforcement officer pursuant to article
5 twenty-nine, chapter thirty of this code, all law
6 enforcement officers shall receive training concerning
7 domestic or family violence.

8 (2) Funding for the training required under
9 subdivision (1) of this section may not exceed the
10 amounts allocated by the spending unit for that purpose
11 from existing appropriations. No provision of this section
12 may be construed to require the Legislature to make any
13 appropriation.

14 (b) The course of instruction and the objectives in
15 learning and performance for the education of law-
16 enforcement officers required pursuant to this section
17 shall be developed and presented in consultation with
18 public and private providers of programs for victims of
19 domestic or family violence and programs of intervention
20 for perpetrators, persons who have demonstrated expertise
21 in training and education concerning domestic or family
22 violence and organizations representing the interests of
23 shelters.

§48-2C-18. Judicial education on domestic or family violence.

1 (a)(1) Subject to the provisions of subdivision (2) of
2 this subsection, as a part of existing training for court
3 personnel, the supreme court of appeals shall develop and
4 present courses of continuing education concerning
5 domestic or family violence for magistrates assistants, and
6 juvenile and adult probation officers.

7 (2) Funding for the continuing education required
8 under subdivision (1) of this section may not exceed the
9 amounts allocated for that purpose by the supreme court
10 of appeals from existing appropriations. No provision of

11 this section may be construed to require the Legislature to
12 make any appropriation.

13 (b) The course of instruction shall be prepared and
14 may be presented in consultation with public and private
15 agencies that provide programs for victims of domestic or
16 family violence and programs of intervention for
17 perpetrators, advocates for victims, persons who have
18 demonstrated expertise in training and education
19 concerning domestic or family violence, organizations
20 representing the interests of shelters, and the family
21 protection services board.

§48-2C-19. Required curricula for public education system.

1 (a)(1) Subject to the provisions of subdivision (2) of
2 this subsection, the state board of education shall select or
3 develop:

4 (A) Curricula that are appropriate for various ages for
5 pupils concerning the dynamics of violence, prevention of
6 violence, including domestic or family violence; and

7 (B) Curricula for school counselors, health-care
8 personnel, administrators and teachers concerning
9 domestic or family violence.

10 (2) Funding for selecting or developing the curricula
11 required under subdivision (1) of this section may not
12 exceed the amounts allocated for that purpose by the
13 spending unit from existing appropriations. No provision
14 of this section may be construed to require the Legislature
15 to make any appropriation.

16 (b) The curricula shall be selected or developed by the
17 state board of education in consultation with public and
18 private agencies that provide programs for conflict
19 resolution, violence prevention, victims of domestic or
20 family violence and programs of intervention for
21 perpetrators of domestic or family violence, advocates for
22 victims, organizations representing the interests of shelters,
23 persons who have demonstrated expertise and experience
24 in education and domestic or family violence and the
25 family protection services board.

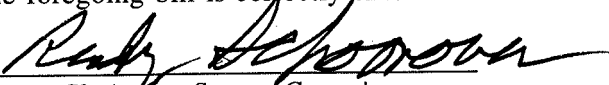
§48-2C-20. Continuing education for school personnel who are required to report child abuse and neglect.

1 (a)(1) Subject to the provisions of subdivision (2) of
2 this subsection, the state department of education shall
3 provide or require courses of continuing education
4 concerning domestic or family violence for employees
5 who are required by law to report child abuse or neglect.

6 (2) Funding for the continuing education provided or
7 required under subdivision (1) of this section may not
8 exceed the amounts allocated for that purpose by the
9 spending unit from existing appropriations. No provision
10 of this section may be construed to require the Legislature
11 to make any appropriation.

12 (b) The courses or requirements shall be prepared
13 and presented in consultation with public and private
14 agencies that provide programs for victims of domestic or
15 family violence, persons who have demonstrated expertise
16 in education and domestic or family violence, advocates
17 for victims, organizations representing the interests of
18 shelters, and the family protection services board.

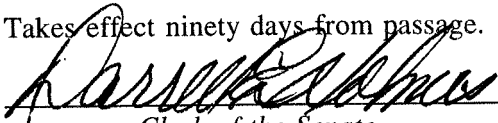
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

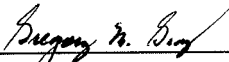

Chairman Senate Committee

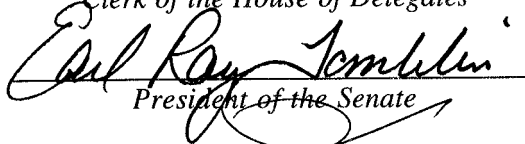

Chairman House Committee


Originating in the House.

Takes effect ninety days from passage.

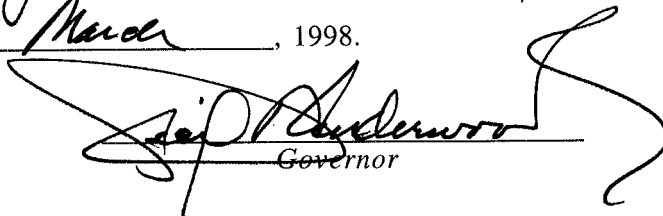

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 12th
day of March, 1998.


Governor

PRESENTED TO THE

GOVERNOR

Date

3/11/98

Time

6:29 pm

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OFFICE OF ASST. TREASURER
SECRETARY OF STATE