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**WEST VIRGINIA LEGISLATURE**  
Regular Session, 2001

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**ENROLLED**

**SENATE BILL NO.** 437

**(By Senator** Wooten, et al **)**

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**PASSED** March 14, 2001

**In Effect** from **Passage**

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SECRETARY OF STATE

## ENROLLED

### Senate Bill No. 437

(BY SENATORS WOOTON, BURNETTE, FANNING, HUNTER,  
KESSLER, MINARD, OLIVERIO, REDD, ROSS, ROWE, DEEM,  
FACEMYER AND MCKENZIE)

[Passed March 16, 2001; in effect from passage.]

AN ACT to amend and reenact sections three and eleven, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section ten, article two-a, chapter fifty-one of said code, all relating to extending the date circuit courts and family law masters will assume jurisdiction of full hearings in domestic violence proceedings.

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

That sections three and eleven, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section ten, article two-a, chapter fifty-one of said code be amended and reenacted, all to read as follows:

#### **CHAPTER 48. DOMESTIC RELATIONS.**

**ARTICLE 2A. PREVENTION AND TREATMENT OF DOMESTIC AND 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 courts,  
2 as constituted under chapter fifty of this code, have  
3 concurrent jurisdiction over proceedings under this article:  
4 *Provided*, That on and after the first day of September,  
5 two thousand one, magistrate court jurisdiction shall be  
6 limited, and thereafter final hearings wherein a protective  
7 order is sought shall be heard before a circuit judge or a  
8 family law master.

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

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

20 (d) *Priority of petitions.* – Any petition filed under the  
21 provisions of this article shall be given priority over any  
22 other civil action before the court, except actions in which  
23 trial is in progress, and shall be docketed immediately  
24 upon filing. Any appeal to the circuit court of a magis-  
25 trate's judgment on a petition for relief under this article  
26 shall be heard within ten working days of the filing of the  
27 appeal.

28 (e) *Full faith and credit.* – Any protective order issued  
29 pursuant to this article shall be effective throughout the  
30 state in every county. Any protective order issued by any  
31 other state, territory or possession of the United States,  
32 Puerto Rico, the District of Columbia or Indian tribe shall  
33 be accorded full faith and credit and enforced as if it were  
34 an order of this state whether or not such relief is available  
35 in this state. A protective order from another jurisdiction

36 is presumed to be valid if the order appears authentic on  
37 its face and shall be enforced in this state. If the validity  
38 of the order is contested, the court or law enforcement to  
39 which the order is presented shall, prior to the final  
40 hearing, determine the existence, validity and terms of  
41 such order in the issuing jurisdiction. A protective order  
42 from another jurisdiction may be enforced even if the  
43 order is not entered into the state law-enforcement  
44 information system described by section twelve of this  
45 article.

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

#### §48-2A-11. Appeals.

1 (a) Prior to the first day of September, two thousand  
2 one, any party to a temporary or final protective order  
3 entered by a magistrate may, as a matter of right, present  
4 a petition for appeal, within five days of entry of the order  
5 in magistrate court, to the circuit court. The order shall  
6 remain in effect pending an appeal unless stayed by the  
7 circuit court.

8 (b) On and after the first day of September, two thou-  
9 sand one, any party to a temporary order entered by a  
10 magistrate or a final protective order entered by a family  
11 lawmaster may, as a matter of right, present a petition for  
12 appeal, within five days of entry of the order by the  
13 magistrate or family law master, to the circuit court. The  
14 order shall remain in effect pending an appeal unless  
15 stayed by the circuit court.

16 (c) No bond shall be required for any appeal under this  
17 section.

18 (d) In any case where a petition for appeal is filed under  
19 this section, the petition shall be heard de novo by the  
20 circuit court within ten days from the filing of the petition  
21 for appeal.

**CHAPTER 51. COURTS AND THEIR OFFICERS.**

**ARTICLE 2A. CIRCUIT COURTS; FAMILY COURT DIVISION.**

**§51-2A-10. Matters to be heard by a family law master.**

1 (a) A chief judge of a circuit court shall refer to the  
2 family law master the following matters for hearing:

3 (1) Actions to obtain orders of support brought under the  
4 provisions of section one, article five, chapter forty-eight-a  
5 of this code;

6 (2) All actions to establish paternity brought under the  
7 provisions of article six, chapter forty-eight-a of this code  
8 and any dependent claims related to such action regarding  
9 child support, custody and visitation;

10 (3) All petitions for writs of habeas corpus wherein the  
11 issue contested is child custody;

12 (4) All motions for temporary relief affecting child  
13 custody, visitation, child support, spousal support or  
14 domestic or family violence, wherein either party has  
15 requested such referral or the court on its own motion in  
16 individual cases or by general order has referred such  
17 motions to the family law master: *Provided*, That if the  
18 family law master determines, in his or her discretion, that  
19 the pleadings raise substantial issues concerning the  
20 identification of separate property or the division of  
21 marital property which may have a bearing on an award  
22 of support, the family law master shall notify the appro-  
23 priate circuit court of this fact and the circuit court may  
24 refer the case to a special commissioner chosen by the  
25 circuit court to serve in such capacity;

26 (5) All petitions for modification of an order involving  
27 child custody, child visitation, child support or spousal  
28 support;

29 (6) All actions for divorce, annulment or separate  
30 maintenance brought pursuant to article two, chapter  
31 forty-eight of this code: *Provided*, That an action for  
32 divorce, annulment or separate maintenance which does  
33 not involve child custody or child support shall be heard  
34 by a circuit judge if, at the time of the filing of the action,  
35 the parties file a written property settlement agreement  
36 which has been signed by both parties;

37 (7) All actions wherein an obligor is contesting the  
38 enforcement of an order of support through the withhold-  
39 ing from income of amounts payable as support or is  
40 contesting an affidavit of accrued support, filed with a  
41 circuit clerk, which seeks to collect arrearage;

42 (8) All actions commenced under chapter forty-eight-b  
43 of this code or the interstate family support act of another  
44 state;

45 (9) Proceedings for the enforcement of support, custody  
46 or visitation orders;

47 (10) All actions to establish custody of a minor child or  
48 visitation with a minor child, including actions brought  
49 pursuant to the uniform child custody jurisdiction act and  
50 actions brought to establish grandparent visitation:  
51 *Provided*, That any action instituted under article six,  
52 chapter forty-nine of this code shall be heard by a circuit  
53 judge;

54 (11) On and after the first day of October, one thousand  
55 nine hundred ninety-nine, civil contempts and direct  
56 contempts: *Provided*, That criminal contempts must be  
57 heard by a circuit judge; and

58 (12) On and after the first day of September, two thou-  
59 sand one, final hearings in domestic or family violence  
60 proceedings wherein a protective order is sought.

61 (b) On its own motion or upon motion of a party, the  
62 circuit court may revoke the referral of a particular matter

63 to a family law master if the family law master is recused,  
64 if the matter is uncontested, or for other good cause, or if  
65 the matter will be more expeditiously and inexpensively  
66 heard by a circuit judge without substantially affecting the  
67 rights of parties.

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

*Gay B. Orr*  
.....  
Chairman Senate Committee

*A. Jamesyanchuk*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Daniel P. Hobus*  
.....  
Clerk of the Senate

*Gregory M. Boy*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *23<sup>rd</sup>*  
Day of *March* ..... 2001.

*Bob Wise*  
.....  
Governor



PRESENTED TO THE

GOVERNOR

Date

3/20/21

Time

9:30am