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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4605

(By Delegates Amores, Fleischauer, Mahan,
Brown and Webster)



Passed March 13, 2004

In Effect Ninety Days from Passage

FILED

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FOR

H. B. 4605

(BY DELEGATES AMORES, FLEISCHAUER, MAHAN,
BROWN AND WEBSTER)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §48-5-509 and §48-5-608 of the code of West Virginia, 1931, as amended; to amend and reenact §48-27-401, §48-27-902, §48-27-903, §48-27-1001 and §48-27-1102 of said code; to amend and reenact §61-2-9 and §61-2-28 of said code; and to amend and reenact §61-7-4 and §61-7-7 of said code, all relating to domestic violence generally; clarifying the relationship between temporary and final domestic violence protective orders and the provisions of protective measures reflected in temporary or final divorce orders entered in divorce proceedings or other types of domestic proceedings; making the violation of emergency or final protective orders issued by injunctive relief or protective order in a divorce proceeding a misdemeanor; clarifying provisions related to the arrest and criminal enforcement of protective order violations; clarifying the penalties which may be imposed for the first and subsequent violation of such protective orders; autho-

rizing the governor's committee on crime, delinquency and correction to develop and promulgate rules regarding the procedures for the dispatch of matters involving domestic violence; relating to prohibitions against the issuance of licenses and permits to carry concealed weapons and the possession of firearms as they pertain to persons who have been convicted of domestic violence offenses and/or are subject to domestic violence protection orders; and clarifying who is proscribed from possessing a firearm due to domestic violence convictions.

Be it enacted by the Legislature of West Virginia:

That §48-5-509 and §48-5-608 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §48-27-401, §48-27-902, §48-27-903, §48-27-1001 and §48-27-1102 of said code be amended and reenacted; that §61-2-9 and §61-2-28 of said code be amended and reenacted; and that §61-7-4 and §61-7-7 of said code be amended and reenacted, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 5. DIVORCE.

PART 5. TEMPORARY RELIEF DURING PENDENCY OF ACTION FOR DIVORCE.

§48-5-509. Enjoining abuse, emergency protective order.

1 (a) The court may enjoin the offending party from mo-
2 lesting or interfering with the other, or otherwise imposing
3 any restraint on the personal liberty of the other, or interfer-
4 ing with the custodial or visitation rights of the other. This
5 order may enjoin the offending party from:

6 (1) Entering the school, business or place of employment
7 of the other for the purpose of molesting or harassing the
8 other;

9 (2) Contacting the other, in person or by telephone, for
10 the purpose of harassment or threats; or

11 (3) Harassing or verbally abusing the other in a public
12 place.

13 (b) Any order entered by the court to protect a party from
14 abuse may grant any other relief authorized by the provisions
15 of article twenty-seven of this chapter, if the party seeking
16 the relief has established the grounds for that relief as re-
17 quired by the provisions of said article.

18 (c) The court, in its discretion, may enter a protective
19 order, as provided in article twenty-seven of this chapter, as
20 part of the final relief granted in a divorce action, either as a
21 part of an order for temporary relief or as part of a separate
22 order. Notwithstanding the provisions of section five hundred
23 five of said article, a protective order entered pursuant to the
24 provisions of this subsection shall remain in effect until a
25 final order is entered in the divorce, unless otherwise ordered
26 by the judge.

PART 6. JUDGMENT ORDERING DIVORCE.

§48-5-608. Injunctive relief or protective orders.

1 (a) When allegations of abuse have been proved, the
2 court shall enjoin the offending party from molesting or in-
3 terfering with the other, or otherwise imposing any restraint
4 on the personal liberty of the other or interfering with the
5 custodial or visitation rights of the other. The order may per-
6 manently enjoin the offending party from entering the school,
7 business or place of employment of the other for the purpose
8 of molesting or harassing the other; or from contacting the
9 other, in person or by telephone, for the purpose of harass-
10 ment or threats; or from harassing or verbally abusing the
11 other in a public place.

12 (b) Any order entered by the court to protect a party from
13 abuse may grant any other relief authorized to be awarded by
14 the provisions of article twenty-seven of this chapter, if the
15 party seeking the relief has established the grounds for that
16 relief as required by the provisions of said article.

17 (c) The court, in its discretion, may enter a protective
18 order, as provided by the provisions of article twenty-seven
19 of this chapter, as part of the final relief in a divorce action,
20 either as a part of a order for final relief or in a separate or-
21 der. A protective order entered pursuant to the provisions of
22 this subsection shall remain in effect for the period of time
23 ordered by the court not to exceed one hundred eighty days:
24 *Provided*, That if the court determines that a violation of a
25 domestic violence protective order entered during or ex-
26 tended by the divorce action has occurred, it may extend the
27 protective order for whatever period the court deems neces-
28 sary to protect the safety of the petitioner and others threat-
29 ened or at risk.

**ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIO-
LENCE.**

PART 4. COORDINATION WITH PENDING COURT ACTIONS.

§48-27-401. Interaction between domestic proceedings

1 (a) During the pendency of a divorce action, a person
2 may file for and be granted relief provided by this article
3 until an order is entered in the divorce action pursuant to part
4 5-501, *et seq.*,

5 (b) If a person who has been granted relief under this
6 article should subsequently become a party to an action for
7 divorce, separate maintenance or annulment, such person
8 shall remain entitled to the relief provided under this article
9 including the right to file for and obtain any further relief, so

10 long as no temporary order has been entered in the action for
11 divorce, annulment and separate maintenance, pursuant to
12 part 5-501, *et seq.*,

13 (c) Except as provided in section 5-509 of this chapter
14 and section 27-402 of this article for a petition and a tempo-
15 rary emergency protective order, no person who is a party to
16 a pending action for divorce, separate maintenance or annul-
17 ment in which an order has been entered pursuant to part 5-
18 501, *et seq.*, of this chapter, shall be entitled to file for or
19 obtain relief against another party to that action under this
20 article until after the entry of a final order which grants or
21 dismisses the action for divorce, annulment or separate main-
22 tenance.

23 (d) Notwithstanding the provisions set forth in section
24 27-505, when an action seeking a divorce, an annulment or
25 separate maintenance, the allocation of custodial responsibil-
26 ity or a habeas corpus action to establish custody, the estab-
27 lishment of paternity, the establishment or enforcement of
28 child support, or other relief under the provisions of this
29 chapter is filed or is reopened by petition, motion or other-
30 wise, then any order issued pursuant to this article which is in
31 effect on the day the action is filed or reopened shall remain
32 in full force and effect by operation of this statute until: (1) A
33 temporary or final order is entered pursuant to the provisions
34 of part 5-501, *et seq.* or part 6-601 *et seq.* of this chapter; or
35 (2) an order is entered modifying such order issued pursuant
36 to this article; or (3) the entry of a final order granting or
37 dismissing the action.

PART 9. SANCTIONS.

§48-27-902. Violations of protective orders; criminal complaints.

1 (a) When a respondent abuses the petitioner or minor
2 children, or both, or is physically present at any location in
3 knowing and willful violation of the terms of an emergency
4 or final protective order under the provisions of this article or
5 sections 5-509 or 5-608 of this chapter granting the relief
6 pursuant to the provisions of this article, any person autho-
7 rized to file a petition pursuant to the provisions of section
8 27-305 or the legal guardian or guardian ad litem may file a
9 petition for civil contempt as set forth in section 27-901.

10 (b) When any such violation of a valid order has oc-
11 curred, the petitioner may file a criminal complaint. If the
12 court finds probable cause upon the complaint, the court shall
13 issue a warrant for arrest of the person charged.

**§48-27-903. Misdemeanor offenses for violation of protective
order, repeat offenses, penalties.**

1 (a) A respondent who abuses the petitioner or minor
2 children or who is physically present at any location in know-
3 ing and willful violation of the terms of: (1) An emergency or
4 final protective order issued under the provisions of this arti-
5 cle or sections 5-509 or 5-608 of this chapter granting relief
6 pursuant to the provisions of this article; or (2) a condition of
7 bail, probation or parole which has the express intent or ef-
8 fect of protecting the personal safety of a particular person or
9 persons is guilty of a misdemeanor and, upon conviction
10 thereof, shall be confined in the county or regional jail for a
11 period of not less than one day nor more than one year, which
12 jail term shall include actual confinement of not less than
13 twenty-four hours, and shall be fined not less than two hun-
14 dred fifty dollars nor more than two thousand dollars.

15 (b) A respondent who is convicted of a second or subse-
16 quent offense under subsection (a) of this section is guilty of
17 a misdemeanor and, upon conviction thereof, shall be con-

18 fined in the county or regional jail for not less than three
19 months nor more than one year, which jail term shall include
20 actual confinement of not less than twenty-four hours, and
21 fined not less than five hundred dollars nor more than three
22 thousand dollars, or both.

PART 10. ARRESTS.

§48-27-1001. Arrest for violations of protective orders.

1 (a) When a law-enforcement officer observes any respon-
2 dent abuse the petitioner or minor children or the respon-
3 dent's physical presence at any location in knowing and will-
4 ful violation of the terms of an emergency or final protective
5 order issued under the provisions of this article or section 5-
6 509 or 5-608 of this chapter granting the relief pursuant to the
7 provisions of this article, he or she shall immediately arrest
8 the respondent.

9 (b) When a family or household member is alleged to
10 have committed a violation of the provisions of section 27-
11 903, a law-enforcement officer may arrest the perpetrator for
12 said offense where:

13 (1) The law-enforcement officer has observed credible
14 corroborative evidence, as defined in subsection 27-1002(b),
15 that the offense has occurred; and

16 (2) The law-enforcement officer has received, from the
17 victim or a witness, a verbal or written allegation of the facts
18 constituting a violation of section 27-903; or

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

21 (c) Any person who observes a violation of a protective
22 order as described in this section, or the victim of such abuse

23 or unlawful presence, may call a local law-enforcement
24 agency, which shall verify the existence of a current order,
25 and shall direct a law-enforcement officer to promptly inves-
26 tigate the alleged violation.

27 (d) Where there is an arrest, the officer shall take the
28 arrested person before a circuit court or a magistrate and,
29 upon a finding of probable cause to believe a violation of an
30 order as set forth in this section has occurred, the court or
31 magistrate shall set a time and place for a hearing in accor-
32 dance with the West Virginia rules of criminal procedure.

PART 11. MISCELLANEOUS PROVISIONS.

§48-27-1102. Authorization for the promulgation of legislative rules.

1 The governor's committee on crime, delinquency and
2 correction shall develop and promulgate rules for state,
3 county and municipal law-enforcement officers, law-enforce-
4 ment agencies and communications and emergency opera-
5 tions centers which dispatch law-enforcement officers with
6 regard to domestic violence: *Provided*, That such rules and
7 procedures must be consistent with the priority criteria pre-
8 scribed by generally applicable department procedures. Prior
9 to the publication of proposed rules, the governor's commit-
10 tee on crime, delinquency and correction shall convene a
11 meeting or meetings of an advisory committee to assist in the
12 development of the rules. The advisory committee shall be
13 composed of persons invited by the committee to represent
14 state, county and local law-enforcement agencies and offi-
15 cers, to represent magistrates and court officials, to represent
16 victims of domestic violence, to represent shelters receiving
17 funding pursuant to article 26-101, et seq., of this chapter, to
18 represent communications and emergency operations centers
19 that dispatch law enforcement officers and to represent other

20 persons or organizations who, in the discretion of the com-
21 mittee, have an interest in the rules. The rules and the revi-
22 sions thereof as provided in this section shall be promulgated
23 as legislative rules in accordance with chapter twenty-nine-a
24 of this code. The committee shall meet at least annually to
25 review the rules and to propose revisions as a result of
26 changes in law or policy.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9. Malicious or unlawful assault; assault; battery; penalties.

1 (a) If any person maliciously shoot, stab, cut or wound
2 any person, or by any means cause him bodily injury with
3 intent to maim, disfigure, disable or kill, he shall, except
4 where it is otherwise provided, be guilty of a felony and,
5 upon conviction, shall be punished by confinement in the
6 penitentiary not less than two nor more than ten years. If such
7 act be done unlawfully, but not maliciously, with the intent
8 aforesaid, the offender shall be guilty of a felony and, upon
9 conviction, shall, in the discretion of the court, either be con-
10 fined in the penitentiary not less than one nor more than five
11 years, or be confined in jail not exceeding twelve months and
12 fined not exceeding five hundred dollars.

13 (b) *Assault.* — If any person unlawfully attempts to com-
14 mit a violent injury to the person of another or unlawfully
15 commits an act which places another in reasonable apprehen-
16 sion of immediately receiving a violent injury, he shall be
17 guilty of a misdemeanor and, upon conviction, shall be con-
18 fined in jail for not more than six months, or fined not more
19 than one hundred dollars, or both such fine and imprison-
20 ment.

21 (c) *Battery*. — If any person unlawfully and intentionally
22 makes physical contact of an insulting or provoking nature
23 with the person of another or unlawfully and intentionally
24 causes physical harm to another person, he shall be guilty of
25 a misdemeanor and, upon conviction, shall be confined in jail
26 for not more than twelve months, or fined not more than five
27 hundred dollars, or both such fine and imprisonment.

28 (d) Any person convicted of a violation of subsection (b)
29 or (c) of this section who has, in the ten years prior to said
30 conviction, been convicted of a violation of either subsection
31 (b) or (c) of this section where the victim was a current or
32 former spouse, current or former sexual or intimate partner, a
33 person with whom the defendant has a child in common, a
34 person with whom the defendant cohabits or has cohabited, a
35 parent or guardian, the defendant's child or ward or a mem-
36 ber of the defendant's household at the time of the offense or
37 convicted of a violation of section twenty-eight of this article
38 or has served a period of pretrial diversion for an alleged
39 violation of subsection (b) or (c) of this section or section
40 twenty-eight of this article when the victim has such present
41 or past relationship shall upon conviction be subject to the
42 penalties set forth in section twenty-eight of this article for a
43 second, third or subsequent criminal act of domestic violence
44 offense, as appropriate.

§61-2-28. Domestic violence — Criminal acts.

1 (a) *Domestic battery*. — Any person who unlawfully and
2 intentionally makes physical contact of an insulting or pro-
3 voking nature with his or her family or household member or
4 unlawfully and intentionally causes physical harm to his or
5 her family or household member, is guilty of a misdemeanor
6 and, upon conviction thereof, shall be confined in a county or
7 regional jail for not more than twelve months, or fined not
8 more than five hundred dollars, or both.

9 (b) *Domestic assault.* — Any person who unlawfully
10 attempts to commit a violent injury against his or her family
11 or household member or unlawfully commits an act which
12 places his or her family or household member in reasonable
13 apprehension of immediately receiving a violent injury, is
14 guilty of a misdemeanor and, upon conviction thereof, shall
15 be confined in a county or regional jail for not more than six
16 months, or fined not more than one hundred dollars, or both.

17 (c) *Second offense.* — Domestic Assault or Domestic
18 Battery

19 A person convicted of a violation of subsection (a) of this
20 section after having been previously convicted of a violation
21 of subsection (a) or (b) of this section, after having been
22 convicted of a violation of subsection (b) or (c), section nine
23 of this article where the victim was his or her current or for-
24 mer spouse, current or former sexual or intimate partner,
25 person with whom the defendant has a child in common,
26 person with whom the defendant cohabits or has cohabited, a
27 parent or guardian, the defendant's child or ward or a mem-
28 ber of the defendant's household at the time of the offense or
29 who has previously been granted a period of pretrial diver-
30 sion pursuant to section twenty-two, article eleven of this
31 chapter for a violation of subsection (a) or (b) of this section,
32 or a violation of subsection (b) or (c), section nine of this
33 article where the victim was a current or former spouse, cur-
34 rent or former sexual or intimate partner, person with whom
35 the defendant has a child in common, person with whom the
36 defendant cohabits or has cohabited, a parent or guardian, the
37 defendant's child or ward or a member of the defendant's
38 household at the time of the offense shall guilty of a misde-
39 meanor, and upon conviction thereof, be confined in a county
40 or regional jail for not less than sixty days nor more than one
41 year, or fined not more than one thousand dollars, or both.

42 A person convicted of a violation of subsection (b) of this
43 section after having been previously convicted of a violation
44 of subsection (a) or (b) of this section, after having been
45 convicted of a violation of subsection (b) or (c), section nine
46 of this article where the victim was a current or former
47 spouse, current or former sexual or intimate partner, person
48 with whom the defendant has a child in common, person with
49 whom the defendant cohabits or has cohabited, a parent or
50 guardian, the defendant's child or ward or a member of the
51 defendant's household at the time of the offense or having
52 previously been granted a period of pretrial diversion pursu-
53 ant to section twenty-two, article eleven of this chapter for a
54 violation of subsection (a) or (b) of this section or subsection
55 (b) or (c), section nine of this article where the victim was a
56 current or former spouse, current or former sexual or intimate
57 partner, person with whom the defendant has a child in com-
58 mon, person with whom the defendant cohabits or has cohab-
59 ited, a parent or guardian, the defendant's child or ward or a
60 member of the defendant's household at the time of the of-
61 fense shall be confined in a county or regional jail for not less
62 than thirty days nor more than six months, or fined not more
63 than five hundred dollars, or both.

64 (d) Any person who has been convicted of a third or
65 subsequent violation of the provisions of subsection (a) or (b)
66 of this section, a third or subsequent violation of the provi-
67 sions of section nine of this article where the victim was a
68 current or former spouse, current or former sexual or intimate
69 partner, person with whom the defendant has a child in com-
70 mon, person with whom the defendant cohabits or has cohab-
71 ited, a parent or guardian, the defendant's child or ward or a
72 member of the defendant's household at the time of the of-
73 fense or who has previously been granted a period of pretrial
74 diversion pursuant to section twenty-two, article eleven of
75 this chapter for a violation of subsection (a) or (b) of this
76 section or a violation of the provisions of section nine of this

77 article in which the victim was a current or former spouse,
78 current or former sexual or intimate partner, person with
79 whom the defendant has a child in common, person with
80 whom the defendant cohabits or has cohabited, a parent or
81 guardian, the defendant's child or ward or a member of the
82 defendant's household at the time of the offense, or any com-
83 bination of convictions or diversions for these offenses, is
84 guilty of a felony if the offense occurs within ten years of a
85 prior conviction of any of these offenses and, upon convic-
86 tion thereof, shall be confined in a state correctional facility
87 not less than one nor more than five years or fined not more
88 than two thousand five hundred dollars, or both.

89 (e) As used in this section, "family or household mem-
90 ber" means "family or household member" as defined in 48-
91 27-204 of this code.

92 (f) A person charged with a violation of this section may
93 not also be charged with a violation of subsection (b) or (c),
94 section nine of this article for the same act.

95 (g) No law-enforcement officer may be subject to any
96 civil or criminal action for false arrest or unlawful detention
97 for effecting an arrest pursuant to this section or pursuant to
98 48-27-1002 of this code.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-4. License to carry deadly weapons; how obtained.

1 (a) Except as provided in subsection (h) of this section,
2 any person desiring to obtain a state license to carry a con-
3 cealed deadly weapon shall apply to the sheriff of his or her
4 county for such license, and shall pay to the sheriff, at the
5 time of application, a fee of seventy-five dollars, of which
6 fifteen dollars of that amount shall be deposited in the court-
7 house facilities improvement fund created by section six,

8 article twenty-six, chapter twenty-nine of this code. Con-
9 cealed weapons permits may only be issued for pistols or
10 revolvers. Each applicant shall file with the sheriff, a com-
11 plete application, as prepared by the superintendent of the
12 West Virginia state police, in writing, duly verified, which
13 sets forth only the following licensing requirements:

14 (1) The applicant's full name, date of birth, social secu-
15 rity number and a description of the applicant's physical
16 features;

17 (2) That, on the date the application is made, the appli-
18 cant is a bona fide resident of this state and of the county in
19 which the application is made and has a valid driver's license
20 or other state-issued photo identification showing such resi-
21 dence;

22 (3) That the applicant is twenty-one years of age or older:
23 *Provided*, That any individual who is less than twenty-one
24 years of age and possesses a properly issued concealed weap-
25 ons license as of the effective date of this article shall be
26 licensed to maintain his or her concealed weapons license
27 notwithstanding the provisions of this section requiring new
28 applicants to be at least twenty-one years of age: *Provided*,
29 *however*, That upon a showing of any applicant who is eigh-
30 teen years of age or older that he or she is required to carry a
31 concealed weapon as a condition for employment, and pres-
32 ents satisfactory proof to the sheriff thereof, then he or she
33 shall be issued a license upon meeting all other conditions of
34 this section. Upon discontinuance of employment that re-
35 quires the concealed weapons license, if the individual issued
36 the license is not yet twenty-one years of age, then the indi-
37 vidual issued the license is no longer eligible and must return
38 his or her license to the issuing sheriff;

39 (4) That the applicant is not addicted to alcohol, a con-
40 trolled substance or a drug and is not an unlawful user
41 thereof;

42 (5) That the applicant has not been convicted of a felony
43 or of an act of violence involving the misuse of a deadly
44 weapon;

45 (6) That the applicant has not been convicted of a misde-
46 meanor offense of assault or battery either under the provi-
47 sions of section twenty-eight, article two of this chapter or
48 the provisions of subsection (b) or (c), section nine, article
49 two of this chapter in which the victim was a current or for-
50 mer spouse, current or former sexual or intimate partner,
51 person with whom the defendant has a child in common,
52 person with whom the defendant cohabits or has cohabited, a
53 parent or guardian, the defendant's child or ward or a mem-
54 ber of the defendant's household at the time of the offense; or
55 a misdemeanor offense with similar essential elements in a
56 jurisdiction other than this state;

57 (7) That the applicant is not under indictment for a felony
58 offense or is not currently serving a sentence of confinement,
59 parole, probation or other court-ordered supervision imposed
60 by a court of any jurisdiction or is the subject of an emer-
61 gency or temporary domestic violence protective order or is
62 the subject of a final domestic violence protective order en-
63 tered by a court of any jurisdiction;

64 (8) That the applicant is physically and mentally compe-
65 tent to carry such weapon;

66 (9) That the applicant has not been adjudicated to be
67 mentally incompetent;

68 (10) That the applicant has qualified under the minimum
69 requirements set forth in subsection (d) of this section for

70 handling and firing such weapon: *Provided*, That this require-
71 ment shall be waived in the case of a renewal applicant who
72 has previously qualified;

73 (11) That the applicant authorizes the sheriff of the
74 county, or his or her designee, to conduct an investigation
75 relative to the information contained in the application.

76 (b) The sheriff shall conduct an investigation which shall
77 verify that the information required in subdivisions (1), (2),
78 (3), (5), (6), (8) and (9), subsection (a) of this section are true
79 and correct.

80 (c) Sixty dollars of the application fee and any fees for
81 replacement of lost or stolen licenses received by the sheriff
82 shall be deposited by the sheriff into a concealed weapons
83 license administration fund. Such fund shall be administered
84 by the sheriff and shall take the form of an interest bearing
85 account with any interest earned to be compounded to the
86 fund. Any funds deposited in this concealed weapon license
87 administration fund are to be expended by the sheriff to pay
88 for the costs associated with issuing concealed weapons li-
89 censes. Any surplus in the fund on hand at the end of each
90 fiscal year may be expended for other law-enforcement pur-
91 poses or operating needs of the sheriff's office, as the sheriff
92 may consider appropriate.

93 (d) All persons applying for a license must complete a
94 training course in handling and firing a handgun. The suc-
95 cessful completion of any of the following courses fulfills
96 this training requirement:

97 (1) Any official national rifle association handgun safety
98 or training course;

99 (2) Any handgun safety or training course or class avail-
100 able to the general public offered by an official law-enforce-

101 ment organization, community college, junior college, col-
102 lege or private or public institution or organization or hand-
103 gun training school utilizing instructors duly certified by such
104 institution;

105 (3) Any handgun training or safety course or class con-
106 ducted by a handgun instructor certified as such by the state
107 or by the national rifle association;

108 (4) Any handgun training or safety course or class con-
109 ducted by any branch of the United States military, reserve or
110 national guard.

111 A photocopy of a certificate of completion of any of the
112 courses or classes or an affidavit from the instructor, school,
113 club, organization or group that conducted or taught said
114 course or class attesting to the successful completion of the
115 course or class by the applicant or a copy of any document
116 which shows successful completion of the course or class
117 shall constitute evidence of qualification under this section.

118 (e) All concealed weapons license applications must be
119 notarized by a notary public duly licensed under article four,
120 chapter twenty-nine of this code. Falsification of any portion
121 of the application constitutes false swearing and is punishable
122 under the provisions of section two, article five, chapter
123 sixty-one of this code.

124 (f) If the information in the application is found to be true
125 and correct, the sheriff shall issue a license. The sheriff shall
126 issue or deny the license within forty-five days after the ap-
127 plication is filed if all required background checks authorized
128 by this section are completed.

129 (g) Before any approved license shall be issued or be-
130 come effective, the applicant shall pay to the sheriff a fee in
131 the amount of fifteen dollars which the sheriff shall forward

132 to the superintendent of the West Virginia state police within
133 thirty days of receipt. Any such license shall be valid for five
134 years throughout the state, unless sooner revoked.

135 (h) All persons holding a current and valid concealed
136 weapons license as of the sixteenth day of December, one
137 thousand nine hundred ninety-five, shall continue to hold a
138 valid concealed weapons license until his or her license ex-
139 pires or is revoked as provided for in this article: *Provided,*
140 That all reapplication fees shall be waived for applications
141 received by the first day of January, one thousand nine hun-
142 dred ninety-seven, for any person holding a current and valid
143 concealed weapons license as of the sixteenth day of Decem-
144 ber, one thousand nine hundred ninety-five, which contains
145 use restrictions placed upon the license as a condition of
146 issuance by the issuing circuit court. Any licenses reissued
147 pursuant to this subsection will be issued for the time period
148 of the original license.

149 (i) Each license shall contain the full name, social secu-
150 rity number and address of the licensee and a space upon
151 which the signature of the licensee shall be signed with pen
152 and ink. The issuing sheriff shall sign and attach his or her
153 seal to all license cards. The sheriff shall provide to each new
154 licensee a duplicate license card, in size similar to other state
155 identification cards and licenses, suitable for carrying in a
156 wallet, and such license card is deemed a license for the pur-
157 poses of this section.

158 (j) The superintendent of the West Virginia state police
159 shall prepare uniform applications for licenses and license
160 cards showing that such license has been granted and shall do
161 any other act required to be done to protect the state and see
162 to the enforcement of this section.

163 (k) In the event an application is denied, the specific
164 reasons for the denial shall be stated by the sheriff denying
165 the application. Any person denied a license may file, in the
166 circuit court of the county in which the application was made,
167 a petition seeking review of the denial. Such petition shall be
168 filed within thirty days of the denial. The court shall then
169 determine whether the applicant is entitled to the issuance of
170 a license under the criteria set forth in this section. The appli-
171 cant may be represented by counsel, but in no case shall the
172 court be required to appoint counsel for an applicant. The
173 final order of the court shall include the court's findings of
174 fact and conclusions of law. If the final order upholds the
175 denial, the applicant may file an appeal in accordance with
176 the rules of appellate procedure of the supreme court of ap-
177 peals.

178 (l) In the event a license is lost or destroyed, the person
179 to whom the license was issued may obtain a duplicate or
180 substitute license for a fee of five dollars by filing a notarized
181 statement with the sheriff indicating that the license has been
182 lost or destroyed.

183 (m) The sheriff shall, immediately after the license is
184 granted as aforesaid, furnish the superintendent of the West
185 Virginia state police a certified copy of the approved applica-
186 tion. It shall be the duty of the sheriff to furnish to the super-
187 intendent of the West Virginia state police at any time so
188 requested a certified list of all such licenses issued in the
189 county. The superintendent of the West Virginia state police
190 shall maintain a registry of all persons who have been issued
191 concealed weapons licenses.

192 (n) All licensees must carry with them a state-issued
193 photo identification card with the concealed weapons license
194 whenever the licensee is carrying a concealed weapon. Any
195 licensee who fails to have in his or her possession a state-

196 issued photo identification card and a current concealed
197 weapons license while carrying a concealed weapon shall be
198 guilty of a misdemeanor and, upon conviction thereof, shall
199 be fined not less than fifty or more than two hundred dollars
200 for each offense.

201 (o) The sheriff shall deny any application or revoke any
202 existing license upon determination that any of the licensing
203 application requirements established in this section have been
204 violated by the licensee.

205 (p) No person who is engaged in the receipt, review or in
206 the issuance or revocation of a concealed weapon license
207 shall incur any civil liability as the result of the lawful perfor-
208 mance of his or her duties under this article.

209 (q) Notwithstanding the provisions of subsection (a) of
210 this section, with respect to application by a former law-en-
211 forcement officer honorably retired from agencies governed
212 by article fourteen, chapter seven of this code; article four-
213 teen, chapter eight of this code; article two, chapter fifteen of
214 this code; and article seven, chapter twenty of this code, an
215 honorably retired officer is exempt from payment of fees and
216 costs as otherwise required by this section, and the applica-
217 tion of the honorably retired officer shall be granted without
218 proof or inquiry by the sheriff as to those requirements set
219 forth in subdivision (9), subsection (a) of this section, if the
220 officer meets the remainder of the requirements of this sec-
221 tion and has the approval of the appropriate chief law-en-
222 forcement officer.

**§61-7-7. Persons prohibited from possessing firearms; classifica-
tions; reinstatement of rights to possess; of-
fenses; penalties.**

1 (a) Except as provided for in this section, no person shall
2 possess a firearm as such is defined in section two of this
3 article who:

4 (1) Has been convicted in any court of a crime punish-
5 able by imprisonment for a term exceeding one year;

6 (2) Is addicted to alcohol;

7 (3) Is an unlawful user of or addicted to any controlled
8 substance;

9 (4) Has been adjudicated as a mental defective or who
10 has been involuntarily committed to a mental institution;

11 (5) Being an alien is illegally or unlawfully in the United
12 States;

13 (6) Has been discharged from the armed forces under
14 dishonorable conditions;

15 (7) Is subject to a domestic violence protective order that:

16 (A) Was issued after a hearing of which such person
17 received actual notice and at which such person had an op-
18 portunity to participate;

19 (B) Restrains such person from harassing, stalking or
20 threatening an intimate partner of such person or child of
21 such intimate partner or person, or engaging in other conduct
22 that would place an intimate partner in reasonable fear of
23 bodily injury to the partner or child; and

24 (C)(i) Includes a finding that such person represents a
25 credible threat to the physical safety of such intimate partner
26 or child; or

27 (ii) By its terms explicitly prohibits the use, attempted
28 use or threatened use of physical force against such intimate
29 partner or child that would reasonably be expected to cause
30 bodily injury; or

31 (8) Has been has been convicted of a misdemeanor of-
32 fense of assault or battery either under the provisions of sec-
33 tion twenty-eight, article two of this chapter or the provisions
34 of subsection (b) or (c), section nine, article two of this chap-
35 ter in which the victim was a current or former spouse, cur-
36 rent or former sexual or intimate partner, person with whom
37 the defendant has a child in common, person with whom the
38 defendant cohabits or has cohabited, a parent or guardian, the
39 defendant's child or ward or a member of the defendant's
40 household at the time of the offense or has been convicted in
41 any court of any jurisdiction of a comparable misdemeanor
42 crime of domestic violence.

43 Any person who violates the provisions of this subsection
44 shall be guilty of a misdemeanor and, upon conviction
45 thereof, shall be fined not less than one hundred dollars nor
46 more than one thousand dollars or confined in the county jail
47 for not less than ninety days nor more than one year, or both.

48 (b) Notwithstanding the provisions of subsection (a) of
49 this section, any person:

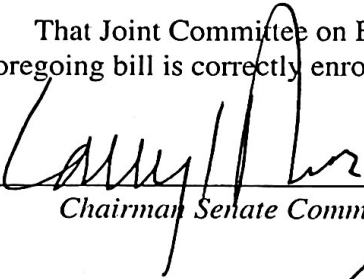
50 (1) Who has been convicted in this state or any other
51 jurisdiction of a felony crime of violence against the person
52 of another or of a felony sexual offense; or

53 (2) Who has been convicted in this state or any other
54 jurisdiction of a felony controlled substance offense involv-
55 ing a Schedule I controlled substance other than marijuana, a
56 Schedule II or a Schedule III controlled substance as such are
57 defined in sections two hundred four, two hundred five and
58 two hundred six, article two, chapter sixty-a of this code and
59 who possesses a firearm as such is defined in section two of
60 this article shall be guilty of a felony and, upon conviction
61 thereof, shall be confined in a state correctional facility for
62 not more than five years or fined not more than five thousand

63 dollars, or both. The provisions of subsection (c) of this sec-
64 tion shall not apply to persons convicted of offenses referred
65 to in this subsection or to persons convicted of a violation of
66 this subsection.

67 (c) Any person prohibited from possessing a firearm by
68 the provisions of subsection (a) of this section may petition
69 the circuit court of the county in which he or she resides to
70 regain the ability to possess a firearm and if the court finds
71 by clear and convincing evidence that the person is compe-
72 tent and capable of exercising the responsibility concomitant
73 with the possession of a firearm, the court may enter an order
74 allowing the person to possess a firearm if such possession
75 would not violate any federal law.

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



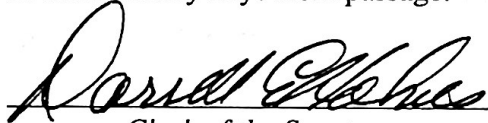
Chairman Senate Committee



Chairman House Committee

Originating in the House.

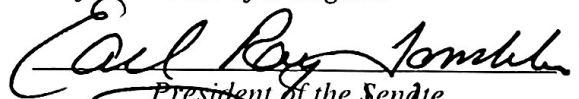
In effect ninety days from passage.



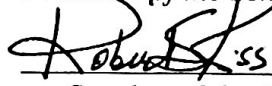
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 7th
day of April 2004.



Governor

3/26/04
4:00pm