

FILED

2005 MAY -4 P 10: 10

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005

**SECOND
ENROLLMENT**

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 3178**

(By Delegates Brown, Amores, Staton,
Webster, Hrutkay and Mahan)

Passed April 16, 2005

Kevin Day

In Effect from Passage
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FOR

H. B. 3178

(BY DELEGATES BROWN, AMORES, STATON,
WEBSTER, HRUTKAY AND MAHAN)

[Amended and Again Passed April 16, 2005, as a result of the objections of the Governor;
in effect ^{90 days from} passage.]

AN ACT to amend and reenact §48-5-608 of the Code of West Virginia, 1931, as amended; and to amend and reenact §48-27-401, §48-27-503, §48-27-504, §48-27-902 and §48-27-1001 of said code, all relating to domestic violence generally; extending protection to any residence; expanding bases for temporary protective orders; and providing authority to arrest for violations of out of state court orders.

Be it enacted by the Legislature of West Virginia:

That §48-5-608 of the Code of West Virginia, 1931, as amended be amended and reenacted; and that §48-27-401, §48-27-503, §48-27-

504, §48-27-902 and §48-27-1001 of said code be amended and reenacted, all to read as follows:

ARTICLE 5. DIVORCE.

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

1 (a) When allegations of abuse have been proved, the court
2 shall enjoin the offending party from molesting or interfering
3 with the other, or otherwise imposing any restraint on the
4 personal liberty of the other or interfering with the custodial or
5 visitation rights of the other. The order may permanently enjoin
6 the offending party from entering the school, business or place
7 of employment of the other for the purpose of molesting or
8 harassing the other or from entering or being present in the
9 immediate environs of the residence of the petitioner or from
10 contacting the other, in person or by telephone, for the purpose
11 of harassment or threats; or from harassing or verbally abusing
12 the other. The relief afforded by the provisions of this subsec-
13 tion may be ordered whether or not there are grounds for relief
14 under subsection (c) of this section and whether or not an order
15 is entered pursuant to such subsection.

16 (b) Any order entered by the court to protect a party from
17 abuse may grant any other relief authorized to be awarded by
18 the provisions of article twenty-seven of this chapter, if the
19 party seeking the relief has established the grounds for that
20 relief as required by the provisions of said article. The relief
21 afforded by the provisions of this subsection may be ordered
22 whether or not there are grounds for relief under subsection (c)
23 of this section and whether or not an order is entered pursuant
24 to subsection (c) of this section.

25 (c) The court, in its discretion, may enter a protective order,
26 as provided by the provisions of article twenty-seven of this
27 chapter, as part of the final relief in a divorce action, either as
28 a part of a order for final relief or in a separate written order. A

29 protective order entered pursuant to ~~the~~ provisions of this
30 subsection shall remain in effect for the ~~period~~ of time ordered
31 by the court not to exceed one hundred eighty days: *Provided,*
32 That the court may extend the protective order for whatever
33 period the court deems necessary to ~~protect~~ the safety of the
34 petitioner and others threatened or at risk, if the court deter-
35 mines:

36 (A) That a violation of a protective order entered during or
37 extended by the divorce action has occurred; or

38 (B) Upon a motion for modification, that a violation of a
39 provision of a final order entered pursuant to this section has
40 occurred.

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

§48-27-401. Interaction between domestic proceedings.

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

5 (b) If a person who has been granted relief under this article
6 should subsequently become a party to ~~an~~ action for divorce,
7 separate maintenance or annulment, such person shall remain
8 entitled to the relief provided under this article including the
9 right to file for and obtain any further relief, so long as no
10 temporary order has been entered in the action for divorce,
11 annulment and separate maintenance, pursuant to Part 5-501, *et*
12 *seq.*;

13 (c) Except as provided in section 5-509 of this chapter and
14 section 27-402 of this article for a petition and a temporary
15 emergency protective order, no person who is a party to a

16 pending action for divorce, separate maintenance or annulment
17 in which an order has been entered pursuant to Part 5-501, *et*
18 *seq.* of this chapter, shall be entitled to file for or obtain relief
19 against another party to that action under this article until after
20 the entry of a final order which grants or dismisses the action
21 for divorce, annulment or separate maintenance.

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

§48-27-503. Permissive provisions in protective order.

1 The terms of a protective order may include:

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

4 (2) Ordering the respondent to refrain from entering or
5 being present in the immediate environs of the residence of the
6 petitioner;

7 (3) Awarding temporary custody of or establishing tempo-
8 rary visitation rights with regard to minor children named in the
9 order;

10 (4) Establishing terms of temporary visitation with regard
11 to the minor children named in the order including, but not
12 limited to, requiring third party supervision of visitations if
13 necessary to protect the petitioner and/or the minor children;

14 (5) Ordering the noncustodial parent to pay to the caretaker
15 parent a sum for temporary support and maintenance of the
16 petitioner and children, if any;

17 (6) Ordering the respondent to pay to the petitioner a sum
18 for temporary support and maintenance of the petitioner, where
19 appropriate;

20 (7) Ordering the respondent to refrain from entering the
21 school, business or place of employment of the petitioner or
22 household or family members for the purpose of violating the
23 protective order;

24 (8) Ordering the respondent to participate in an intervention
25 program for perpetrators;

26 (9) Ordering the respondent to refrain from contacting,
27 telephoning, communicating, harassing or verbally abusing the
28 petitioner.

29 (10) Providing for either party to obtain personal property
30 or other items from a location, including granting temporary
31 possession of motor vehicles owned by either or both of the
32 parties, and providing for the safety of the parties while this
33 occurs, including ordering a law-enforcement officer to
34 accompany one or both of the parties.

35 (11) Ordering the respondent to reimburse the petitioner or
36 other person for any expenses incurred as a result of the
37 domestic violence, including, but not limited to, medical
38 expenses, transportation and shelter; and

39 (12) Ordering the petitioner and respondent to refrain from
40 transferring, conveying, alienating, encumbering, or otherwise
41 dealing with property which could otherwise be subject to the
42 jurisdiction of the court or another court in an action for divorce
43 or support, partition or in any other action affecting their
44 interests in property.

§48-27-504. Provisions in protective order for person witnessing or reporting domestic violence.

1 When the person to be protected is a person who reported
2 or was a witness to the domestic violence, the terms of a
3 protective order may order:

4 (1) The respondent to refrain from abusing, contacting,
5 telephoning, communicating, harassing, verbally abusing or
6 otherwise intimidating the person to be protected;

7 (2) The respondent to refrain from entering the school,
8 business or place of employment of the person to be protected
9 for the purpose of violating the protective order; and

10 (3) The respondent to refrain from entering or being present
11 in the immediate environs of the residence of the petitioner.

§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:

3 (1) In knowing and willful violation of the terms of an
4 emergency or final protective order under the provisions of this
5 article or sections 5-509 or 5-608 of this chapter granting the
6 relief pursuant to the provisions of this article;

7 (2) In knowing and willful violation of the terms of a
8 protection order from another jurisdiction that is required to be
9 enforced pursuant to section 3, article 28 of this chapter; or

10 (3) In knowing and willful violation of the terms of a
11 condition of bail, probation or parole imposed in another state
12 which has the express intent or effect of protecting the personal
13 safety of a particular person or persons in violation of section
14 28-7(a)(3) of this chapter then any person authorized to file a
15 petition pursuant to the provisions of section 27-305 or the legal
16 guardian or guardian ad litem may file a petition for civil
17 contempt as set forth in section 27-901.

18 (b) When any such violation of a valid order has occurred,
19 the petitioner may file a criminal complaint. If the court finds
20 probable cause upon the complaint, the court shall issue a
21 warrant for arrest of the person charged.

§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 respondent's
3 physical presence at any location in knowing and willful
4 violation of the terms of an emergency or final protective order
5 issued under the provisions of this article or section 5-509 or 5-
6 608 of this chapter granting the relief pursuant to the provisions
7 of this article, in knowing and willful violation of the terms of
8 a protection order from another jurisdiction that is required to
9 be enforced pursuant to section four, article twenty-eight of this
10 chapter, he or she shall immediately arrest the respondent.

11 (b) When a family or household member is alleged to have
12 committed a violation of the provisions of section 27-903 or 28-
13 7, a law-enforcement officer may arrest the perpetrator for said
14 offense where:

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

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

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

23 (c) Any person who observes a violation of a protective
24 order as described in this section, or the victim of such abuse or
25 unlawful presence, may call a local law-enforcement agency,
26 which shall verify the existence of a current order, and shall
27 direct a law-enforcement officer to promptly investigate the
28 alleged violation.

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

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



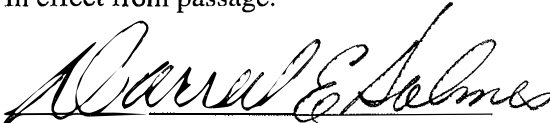
Chairman Senate Committee



Chairman House Committee

Originating in the House.

In effect 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 4th
day of May, 2005.



Governor

PRESENTED TO THE
GOVERNOR

MAY 2 2005

Time 4:10 pm