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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 2739**

(By Delegates Webster, Frazier, Fleischauer, Miley and Longstreth)



Passed April 10, 2009

In Effect Ninety Days from Passage

ENROLLED FILED

COMMITTEE SUBSTITUTE **2009 APR 30 PM 4:48**

FOR

OFFICE WEST VIRGINIA
SECRETARY OF STATE

H. B. 2739

(BY DELEGATES WEBSTER, FRAZIER, FLEISCHAUER,
MILEY AND LONGSTRETH)

[Passed April 10, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §48-27-505, §48-27-701, §48-27-902, §48-27-903 and §48-27-1002 of the Code of West Virginia, 1931, as amended; and to amend said code by adding two new sections, designated §48-27-1003 and §48-27-1004, all relating to revising and expanding the procedures and methods for service, enforcement, and registration of domestic violence protective orders; requiring circuit court clerks to forward copies of protective orders to magistrates or magistrate court clerks; requiring magistrates or magistrate court clerks to forward copies of protective orders to state and federal agencies; requiring law enforcement to attempt service of protective orders within seventy-two hours of receipt of order; authorizing certain persons to file a criminal complaint for violation of a protective order; providing a criminal penalty for violation of a protective order; authorizing the seizure of weapons possessed in violation of a protective order; authorizing nonjudicial enforcement and service of state

protective orders; and providing civil and criminal immunity to government officials for acts or omissions arising out of enforcement of a protective order, or the detention or arrest of an alleged violator of a protective order, if the official acted in a good faith effort to comply with the statutes related to the prevention and treatment of domestic violence.

Be it enacted by the Legislature of West Virginia:

That §48-27-505, §48-27-701, §48-27-902, §48-27-903 and §48-27-1002 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §48-27-1003 and §48-27-1004, all to read as follows:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.

1 (a) Except as otherwise provided in subsection (d),
2 section four hundred one of this article, a protective order,
3 entered by the family court pursuant to this article, is
4 effective for either ninety days or one hundred eighty days,
5 in the discretion of the court. If the court enters an order for
6 a period of ninety days, upon receipt of a written request
7 from the petitioner prior to the expiration of the ninety-day
8 period, the family court shall extend its order for an
9 additional ninety-day period.

10 (b) To be effective, a written request to extend an order
11 from ninety days to one hundred eighty days must be
12 submitted to the court prior to the expiration of the original
13 ninety-day period. A notice of the extension shall be sent by
14 the clerk of the court to the respondent by first-class mail,

15 addressed to the last known address of the respondent as
16 indicated by the court file. The extension of time is effective
17 upon mailing of the notice.

18 (c) Certified copies of any order entered or extension
19 notice made under the provisions of this section shall be
20 served upon the respondent by first class mail, addressed to
21 the last known address of the respondent as indicated by the
22 court file, and delivered to the petitioner and any
23 law-enforcement agency having jurisdiction to enforce the
24 order, including the city police, the county sheriff's office or
25 local office of the West Virginia State Police within
26 twenty-four hours of the entry of the order. The protective
27 order shall be in full force and effect in every county of this
28 state.

29 (d) The family court may modify the terms of a protective
30 order upon motion of either party.

31 (e) The clerk of the circuit court shall cause a copy of any
32 protective order entered by the family court pursuant to the
33 provisions of this article or pursuant to the provisions of
34 chapter forty-eight of this code to be forwarded to the
35 magistrate or magistrate court clerk and the magistrate or
36 magistrate court clerk shall forward a copy of the protective
37 order to the appropriate state and federal agencies for
38 registration of domestic violence offenders as required by
39 state and federal law.

**§48-27-701. Service of pleadings and orders by
law-enforcement officers.**

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

5 law-enforcement officer shall refuse to serve any pleadings
6 or orders entered pursuant to this article. Law enforcement
7 shall attempt to serve all protective orders without delay:
8 *Provided*, That service of process shall be attempted within
9 seventy-two hours of law enforcement's receipt of the order.
10 If service is not made, law enforcement shall continue to
11 attempt service on the respondent until proper service is
12 made.

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

1 (a) Any person authorized to file a petition pursuant to
2 section three hundred five of this article, and any person
3 authorized to file a petition for civil contempt pursuant to
4 section nine hundred one of this article may file a criminal
5 complaint:

6 (1) Against a respondent who knowingly and willfully
7 violates a provision of an emergency or final protective order
8 entered pursuant to:

9 (A) subsection (a) or (b) of section five hundred two of
10 this article;

11 (B) if the court has ordered such relief; subsection (2), (7)
12 or (9) of section five hundred three of this article;

13 (C) subsection (b) or (c) of section five hundred nine,
14 article five of this chapter; or

15 (D) subsection (b) or (c) of section six hundred eight,
16 article five of this chapter;

17 (2) Against a person who violates a condition of bail,
18 probation or parole which has the express intent or effect of

19 protecting the personal safety of a particular person or
20 persons;

21 (3) Against a respondent who knowingly and willfully
22 violates the terms of a protection order from another
23 jurisdiction that is required to be enforced pursuant to section
24 three, article twenty-eight of this chapter; or

25 (4) Against a person who, in violation of subdivision (3),
26 subsection (a), section seven, article twenty-eight of this
27 chapter, knowingly and willfully violates the terms of a
28 condition of bail, probation or parole imposed in another state
29 which has the express intent or effect of protecting the
30 personal safety of a particular person or persons.

31 (b) If the court finds probable cause upon the complaint,
32 the court shall issue a warrant for the arrest of the person
33 charged.

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

1 (a) Any person who knowingly and willfully violates:

2 (1) a provision of an emergency or final protective order
3 entered pursuant to: (A) subsection (a) or (b) of section five
4 hundred two of this article; (B) if the court has ordered such
5 relief; subsection (2), (7) or (9) of section five hundred three
6 of this article; (C) subsection (b) or (c) of section five
7 hundred nine, article five of this chapter; or (D) subsection
8 (b) or (c) of section six hundred eight, article five of this
9 chapter; or

10 (2) a condition of bail, probation or parole which has the
11 express intent or effect of protecting the personal safety of a
12 particular person or persons; is guilty of a misdemeanor and,

13 upon conviction thereof, shall be confined in jail for a period
14 of not less than one day nor more than one year, which jail
15 term shall include actual confinement of not less than
16 twenty-four hours, and shall be fined not less than \$250 nor
17 more than \$2,000.

18 (b) Any person who is convicted of a second or
19 subsequent offense under subsection (a) of this section is
20 guilty of a misdemeanor and, upon conviction thereof, shall
21 be confined in jail for not less than three months nor more
22 than one year, which jail term shall include actual
23 confinement of not less than twenty-four hours, and fined not
24 less than \$500 nor more than \$3,000, or both.

§48-27-1002. 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 violation
3 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 the
13 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 the
21 offense and may include, but is not limited to, the following:

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

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

33 (3) *Condition of the scene.* -- Damaged premises or
34 furnishings; disarray or misplaced objects consistent with the
35 effects of a struggle.

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

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

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

56 (e) Whenever any person is arrested pursuant to the
57 provisions of this article or for a violation of an order issued
58 pursuant article five, section five hundred nine, the arresting
59 officer, subject to the requirements of the Constitutions of
60 this State and of the United States:

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

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

68 (3) May seize all weapons that are possessed in violation
69 of a valid protective order.

§48-27-1003. Nonjudicial enforcement of order.

1 (a) A law-enforcement officer of this state, upon
2 determining that there is probable cause to believe that a
3 valid protective order exists and that the order has been
4 violated, shall enforce the order pursuant to any authority to
5 arrest under the code. Presentation of a protective order that
6 identifies both the protected individual and the respondent
7 and that appears, on its face, to be authentic and currently in
8 effect constitutes probable cause to believe that a valid

9 protective order exists. For the purposes of this section, the
10 protective order may be inscribed on a tangible medium or
11 may have been stored in an electronic or other medium if it
12 is retrievable in perceivable form. Presentation of a certified
13 copy of a protective order is not required for enforcement.

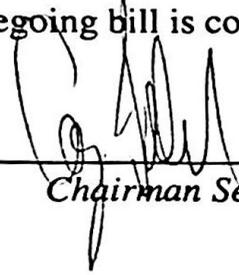
14 (b) If a protective order is not presented, a
15 law-enforcement officer of this state may consider other
16 credible information in determining whether there is probable
17 cause to believe that a valid protective order exists.

18 (c) If a law-enforcement officer of this state determines
19 that an otherwise valid protective order cannot be enforced
20 because the respondent has not been notified of or served
21 with the order, the officer shall inform the respondent of the
22 order, make a reasonable effort to serve the order upon the
23 respondent and allow the respondent a reasonable
24 opportunity to comply with the order before enforcing the
25 order.

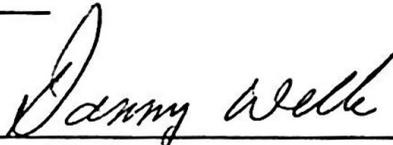
§48-27-1004. Immunity.

1 This state or a local governmental agency, or a
2 law-enforcement officer, prosecuting attorney, clerk of court
3 or any state or local governmental official acting in an
4 official capacity, is immune from civil and criminal liability
5 for an act or omission arising out of the enforcement of a
6 protective order or the detention or arrest of an alleged
7 violator of a protective order if the act or omission was done
8 in good faith in an effort to comply with this article.

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



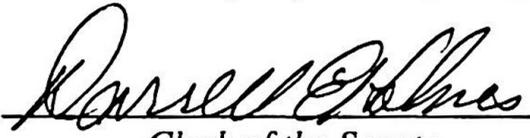
Chairman Senate Committee



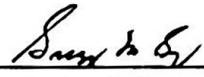
Chairman House Committee

Originating in the House.

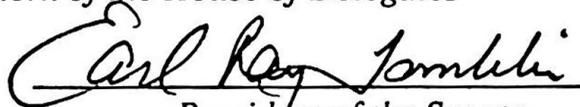
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

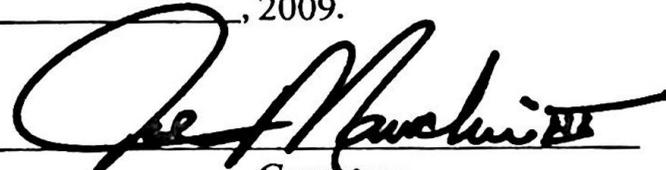


President of the Senate



Speaker of the House of Delegates

The within is approved this the 30th
day of April, 2009.



Governor

PRESENTED TO THE
GOVERNOR

APR 29 2009

Time 11:25 hr