WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4354

(By Delegates Miley, Susman, Longstreth, Ferro, Brown, Ross and Moore)

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Passed March 13, 2010

In Effect Ninety Days From Passage
AN ACT to amend and reenact §48-27-1002 of the Code of West Virginia, 1931, as amended, relating to conditions and arrests in domestic violence matters; including certain injunctive relief and protective orders the violation of which allow law-enforcement officers to seize weapons in possession of domestic violence respondents.

Be it enacted by the Legislature of West Virginia:

That §48-27-1002 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-1002. Arrest in domestic violence matters; conditions.

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

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

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

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

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

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

(2) Condition of the accused. -- Physical injury or other conditions similar to those set out for the condition of the victim which are consistent with the alleged offense or alleged acts of self-defense by the victim.
(3) Condition of the scene. -- Damaged premises or furnishings; disarray or misplaced objects consistent with the effects of a struggle.

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

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

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

(e) Whenever any person is arrested pursuant to the provisions of this article or for a violation of an order issued pursuant to section five hundred nine or subsections (b) and (c), of section six hundred eight, article five of this chapter the arresting officer, subject to the requirements of the Constitutions of this state and of the United States:

(1) Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of domestic violence;
(2) May seize a weapon that is in plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons; and

(3) May seize all weapons that are possessed in violation of a valid protective order.
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   day of  , 2010.

Governor
PRESENTED TO THE
GOVERNOR
MAR 2 5 2010

Time 10:00 AM