

HB 4354

2010 APR -1 PM 4:25
CLERK OF THE HOUSE OF DELEGATES
WEST VIRGINIA SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 4354**

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



Passed March 13, 2010

In Effect Ninety Days From Passage

E N R O L L E D

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H. B. 4354

(BY DELEGATES MILEY, SUSMAN, LONGSTRETH,
FERRO, BROWN, ROSS AND MOORE)

[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
2 contrary, if a person is alleged to have committed a violation

3 of the provisions of subsection (a) or (b), section twenty-
4 eight, article two, chapter sixty-one of this code against a
5 family or household member, in addition to any other
6 authority to arrest granted by this code, a law-enforcement
7 officer has authority to arrest that person without first
8 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.

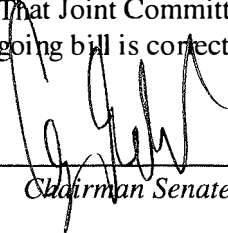
56 (e) Whenever any person is arrested pursuant to the
57 provisions of this article or for a violation of an order issued
58 pursuant to section five hundred nine or subsections (b) and
59 (c), of section six hundred eight, article five of this chapter
60 the arresting officer, subject to the requirements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

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

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

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

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



Chairman Senate Committee



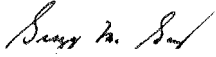
Chairman House Committee

Originating in the House.

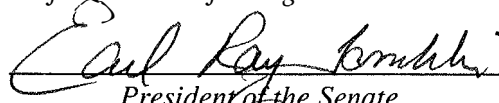
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates



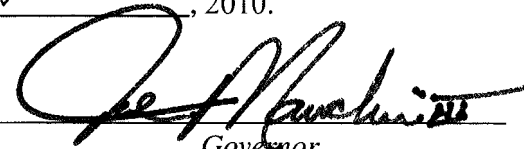
President of the Senate



Speaker of the House of Delegates

OFFICE OF THE CLERK OF THE SENATE
2010 APR -1 PM 4:25
FILED

The within is approved this the 1st
day of April, 2010.



Governor

PRESENTED TO THE
GOVERNOR

MAR 25 2010

Time 10:00 AM