

FILED

2010 MAR 24 PM 4: 52

WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

WEST VIRGINIA
SECRETARY OF STATE

—●—
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 490

(SENATORS KESSLER, LAIRD, PALUMBO, BARNES,
FOSTER, UNGER, OLIVERIO, WHITE,
WELLS AND PLYMALE, *original sponsors*)

[Passed March 13, 2010; in effect ninety days from passage.]

SB 490

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AN ACT to amend and reenact §48-27-202, §48-27-503, §48-27-505, §48-27-901 and §48-27-903 of the Code of West Virginia, 1931, as amended, all relating to prevention and treatment of domestic violence; authorizing family court judges to issue protective orders that contain certain provisions related to animals; providing that family court judges may make protective orders with a one year duration upon a finding of aggravating circumstances; authorizing family court judges to extend protective orders with a one year duration; establishing criteria for granting lengthier periods of protection; requiring secured bonds to prevent future domestic violence; amending current penalties for violations of protective orders; and creating a new misdemeanor offense of third and subsequent offenses for violations of a protective order.

Be it enacted by the Legislature of West Virginia:

That §48-27-202, §48-27-503, §48-27-505, §48-27-901 and §48-27-903 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART 2. DEFINITIONS.

§48-27-202. Domestic violence defined.

1 “Domestic violence” or “abuse” means the occurrence of
2 one or more of the following acts between family or
3 household members, as that term is defined in section two
4 hundred four of this article:

5 (1) Attempting to cause or intentionally, knowingly or
6 recklessly causing physical harm to another with or
7 without dangerous or deadly weapons;

8 (2) Placing another in reasonable apprehension of
9 physical harm;

10 (3) Creating fear of physical harm by harassment,
11 stalking, psychological abuse or threatening acts;

12 (4) Committing either sexual assault or sexual abuse as
13 those terms are defined in articles eight-b and eight-d,
14 chapter sixty-one of this code; and

15 (5) Holding, confining, detaining or abducting another
16 person against that person’s will.

§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
3 or household jointly resided in at the time the abuse
4 occurred;

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

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

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

16 (5) Ordering the noncustodial parent to pay to the
17 caretaker parent a sum for temporary support and mainte-
18 nance of the petitioner and children, if any;

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

22 (7) Ordering the respondent to refrain from entering the
23 school, business or place of employment of the petitioner
24 or household or family members for the purpose of violat-
25 ing the protective order;

26 (8) Ordering the respondent to participate in an inter-
27 vention program for perpetrators;

28 (9) Ordering the respondent to refrain from contacting,
29 telephoning, communicating, harassing or verbally
30 abusing the petitioner;

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

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

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

47 (13) Awarding the petitioner the exclusive care, posses-
48 sion, or control of any animal owned, possessed, leased,
49 kept or held by either the petitioner or the respondent or
50 a minor child residing in the residence or household of
51 either the petitioner or the respondent and prohibiting the
52 respondent from taking, concealing, molesting, physically
53 injuring, killing or otherwise disposing of the animal and
54 limiting or precluding contact by the respondent with the
55 animal; and

56 (14) Ordering any other relief the court deems necessary
57 to protect the physical safety of petitioner or those persons
58 for whom a petition may be filed as provided in subdivi-
59 sion (2), section three hundred five of this article.

**§48-27-505. Time period a protective order is in effect; exten-
sion 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. Upon receipt of a written
6 request for renewal from the petitioner prior to the
7 expiration of the original order, the family court shall
8 extend its order for an additional ninety-day period.

9 (b) Notwithstanding the provisions of subsection (a), the
10 court may enter a protective order for a period of one year
11 if the court finds by a preponderance of the evidence, after
12 a hearing that any of the following aggravating factors are
13 present:

14 (1) That there has been a material violation of a previ-
15 ously entered protective order;

16 (2) That two or more protective orders have been entered
17 against the respondent within the previous five years;

18 (3) That respondent has one or more prior convictions for
19 domestic battery or assault or a felony crime of violence
20 where the victim was a family or household member;

21 (4) That the respondent has committed a violation of the
22 provisions of section nine-a, article two, chapter sixty-one
23 of this code against a person protected by an existing
24 order of protection; or

25 (5) That the totality of the circumstances presented to
26 the court require a one year period in order to protect the
27 physical safety of the petitioner or those persons for whom
28 a petition may be filed as provided in subdivision (2),
29 section three hundred five of this article.

30 (c) The court may extend a protective order entered
31 pursuant to subsection (b) of this section for whatever
32 period the court considers necessary to protect the physi-
33 cal safety of the petitioner or those persons for whom a
34 petition may be filed as provided in subdivision (2), section
35 three hundred five of this article, if the court finds by a
36 preponderance of evidence, after a hearing of which
37 respondent has been given notice, that:

38 (1) A material violation of the existing protective order
39 has occurred; or

40 (2) Respondent has committed a material violation of a
41 provision of a final order entered pursuant to subsection
42 (c), section six hundred eight, article five of this chapter
43 has occurred.

44 (d) To be effective, a written request to renew a ninety or
45 one hundred eighty-day order must be submitted to the
46 court prior to the expiration of the original order period.
47 A notice of the extension shall be sent by the clerk of the
48 court to the respondent by first-class mail, addressed to
49 the last known address of the respondent as indicated by
50 the court file. The extension of time is effective upon
51 mailing of the notice.

52 (e) Certified copies of any order entered or extension
53 notice made under the provisions of this section shall be
54 served upon the respondent by first class mail, addressed
55 to the last known address of the respondent as indicated
56 by the court file, and delivered to the petitioner and any
57 law-enforcement agency having jurisdiction to enforce the
58 order, including the city police, the county sheriff's office
59 or local office of the West Virginia State Police within
60 twenty-four hours of the entry of the order. The protective
61 order shall be in full force and effect in every county of
62 this state.

63 (f) The family court may modify the terms of a protective
64 order upon motion of either party.

65 (g) The clerk of the circuit court shall cause a copy of
66 any protective order entered by the family court pursuant
67 to the provisions of this article or pursuant to the provi-
68 sions of chapter forty-eight of this code to be forwarded to
69 the magistrate or magistrate court clerk and the magis-
70 trate or magistrate court clerk shall forward a copy of the
71 protective order to the appropriate state and federal
72 agencies for registration of domestic violence offenders as
73 required by state and federal law.

PART 9. SANCTIONS.

§48-27-901. Civil contempt; violation of protective orders; order to show cause.

1 (a) Any party to a protective order or a legal guardian or
2 guardian ad litem may file a petition for civil contempt
3 alleging a violation of an order issued pursuant to the
4 provisions of this article. The petition shall be filed in the
5 family court, if a family court entered an order or in the
6 circuit court, if a circuit court entered the order, in the
7 county in which the violation occurred or the county in
8 which the order was issued.

9 (b) When a petition for an order to show cause is filed, a
10 hearing on the petition shall be held within five days from
11 the filing of the petition. Any order to show cause which
12 is issued shall be served upon the alleged violator.

13 (c) Upon a finding of contempt, the court may order the
14 violator to comply with specific provisions of the protec-
15 tive order and post a bond as surety for faithful compli-
16 ance with the order. The bond may not be a personal
17 recognizance bond and shall be in an amount that does not
18 exceed the ability of the violator to post. The bond may
19 not be waived by a fee waiver pursuant to the provisions
20 of section one, article two, chapter fifty-nine of this code.

§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:

4 (A) Subsection (a) or (b) of section five hundred two of
5 this article;

6 (B) If the court has ordered such relief; subsection (2),
7 (7), (9), or (14) of section five hundred three of this article;

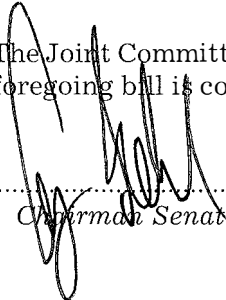
8 (C) Subsection (b) or (c) of section five hundred nine,
9 article five of this chapter; or (D) subsection (b) or (c) of
10 section six hundred eight, article five of this chapter; or

11 (2) A condition of bail, probation or parole which has the
12 express intent or effect of protecting the personal safety of
13 a particular person or persons; is guilty of a misdemeanor
14 and, upon conviction thereof, shall be confined in jail for
15 a period of not less than one day nor more than one year,
16 which jail term shall include actual confinement of not
17 less than twenty-four hours, and shall be fined not less
18 than \$250 nor more than \$2,000.

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

26 (c) A respondent who is convicted of a third or subse-
27 quent offense under subsection (a) which the violation
28 occurs within ten years of a prior conviction of this offense
29 is guilty of a misdemeanor, and upon conviction thereof,
30 shall be confined in jail not less than six months nor more
31 than one year, which jail term shall include actual con-
32 finement of not less than six months, and fined not less
33 than \$500 nor more than \$4,000.

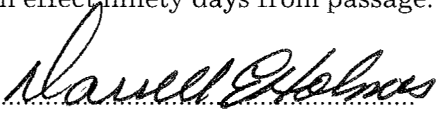
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

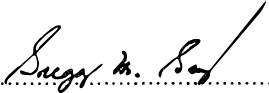

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Chairman Senate Committee

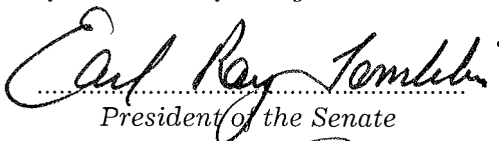

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

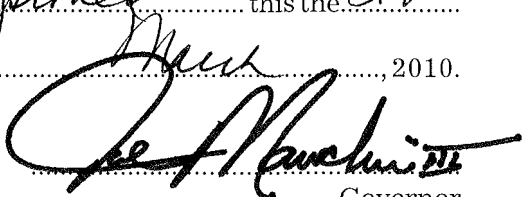

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 24th
Day of June, 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 23 2010

Time 11:40am