

# WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Enrolled  
Committee Substitute  
for

**Senate Bill 225**

SENATORS TRUMP AND BLAIR, *original sponsors*

[Passed April 3, 2017; in effect from passage]

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2017 APR 11 P 3:33

FILED

SB 225

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1 AN ACT to amend and reenact §48-27-402 of the Code of West Virginia, 1931, as amended,  
2 relating to including custody cases in those types of cases in which a magistrate may only  
3 enter certain types of relief if a family court has previously entered a temporary order.

*Be it enacted by the Legislature of West Virginia:*

1 That §48-27-402 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

**ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.**

PART IV. COORDINATION WITH PENDING COURT ACTIONS.

**§48-27-402. Proceedings in magistrate court when temporary divorce, annulment, separate maintenance or custody order is in effect.**

1 (a) The provisions of this section apply where a temporary order has been entered by a  
2 family court in an action for divorce, annulment, separate maintenance or custody,  
3 notwithstanding the provisions of subsection 27-401(c) of this article.

4 (b) A person who is a party to an action for divorce, annulment, separate maintenance or  
5 custody in which a temporary order has been entered pursuant to section 5-501 of this chapter  
6 may petition the magistrate court for a temporary emergency protective order pursuant to this  
7 section for any violation of the provisions of this article occurring after the date of entry of the  
8 temporary order pursuant to section 5-501 of this chapter.

9 (c) The only relief that a magistrate may award pursuant to this section is a temporary  
10 emergency protective order:

11 (1) Directing the respondent to refrain from abusing the petitioner or minor children, or  
12 both;

13 (2) Ordering the respondent to refrain from entering the school, business or place of  
14 employment of the petitioner or household members or family members for the purpose of  
15 violating the protective order; and

16 (3) Ordering the respondent to refrain from contacting, telephoning, communicating with,  
17 harassing or verbally abusing the petitioner.

18 (d) A temporary emergency protective order may modify an award of custody or visitation  
19 only upon a showing, by clear and convincing evidence, of the respondent's abuse of a child, as  
20 abuse is defined in section 27-202 of this article. An order of modification shall clearly state which  
21 party has custody and describe why custody or visitation arrangements were modified.


22 (e) (1) The magistrate shall forthwith transmit a copy of any temporary emergency  
23 protective order, together with a copy of the petition, by mail or by facsimile machine to the family  
24 court in which the action is pending and to law-enforcement agencies. The family court shall set  
25 a hearing on the matter to be held no later than ten days following the entry of the order by  
26 magistrate. The family court shall give notice of the hearing date, time and place to the parties  
27 and shall advise them of their opportunity to appear and participate in a hearing to determine  
28 whether the order entered by the magistrate should be extended by the family court to a date  
29 certain or should be vacated. The notice shall also provide that a party's failure to appear may  
30 result in the entry of an order extending the order entered by the magistrate to a date certain or  
31 vacating the order of the magistrate. Subsequent to the hearing, the family court shall forthwith  
32 enter an order and cause the same to be served on the parties and transmitted by mail or by  
33 facsimile machine to the issuing magistrate. The magistrate court clerk shall forward a copy of  
34 the family court order to law-enforcement agencies.

35 (2) If no temporary order has been entered in the pending action for divorce, annulment,  
36 separate maintenance or custody, the family court shall forthwith return the order with such  
37 explanation to the issuing magistrate. The magistrate who issued the order shall vacate the order,  
38 noting thereon the reason for termination. The magistrate court clerk shall transmit a copy of the  
39 vacated order to the parties and law-enforcement agencies.

40 (f) Notwithstanding any other provision of this code, if the family court extends the  
41 temporary emergency protective order entered by the magistrate or if, pursuant to the provisions

42 of section 5-509, the family court enters a protective order as temporary relief in an action for  
43 divorce, the family court order shall be treated and enforced as a protective order issued under  
44 the provisions of this article.

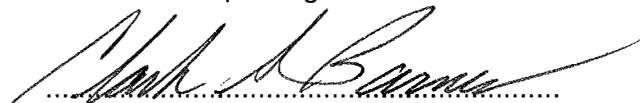
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


  
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Chairman, Senate Committee

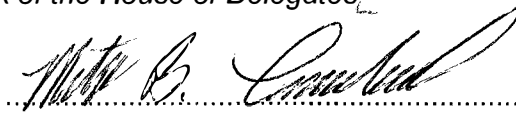
  
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Chairman, House Committee


Originated in the Senate.

In effect from passage.

  
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Clerk of the Senate

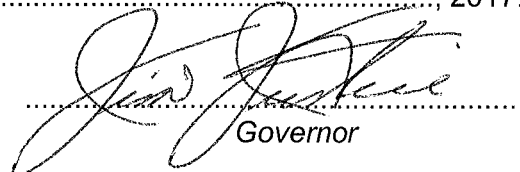
  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker of the House of Delegates

FILED  
2017 APR 11 P 3:33  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

The within *is approved* this the *11th*  
Day of *April*, 2017.

  
.....  
Governor

PRESENTED TO THE GOVERNOR

APR 06 2017

Time 3:04 pm