

HB 4366

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4366

BY DELEGATES D. SMITH, MARPLE, HECKERT,

HILLENBRAND, RIDENOUR, SHEEDY, AND WATT

[Passed March 14, 2026; in effect 90 days from
passage (June 12, 2026)]

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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1 AN ACT to amend and reenact §48-27-209, §48-27-403, §48-28-4, §53-8-1, and §53-8-5 of the
2 Code of West Virginia, 1931, as amended, relating to military interpersonal violence;
3 defining terms; providing for use of military protective order in petition for emergency
4 protective order; providing for notification by law-enforcement officers to relevant agencies
5 of potential violations of military protective orders; and providing for use of military
6 protective order in petition for temporary personal safety order.

Be it enacted by the Legislature of West Virginia:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-209. Protective order and military protective order defined.

1 "Protective order" means an emergency protective order entered by a magistrate as a
2 result of the emergency hearing or a protective order entered by a family court judge upon final
3 hearing.

4 "Military protective order" means a protective order issued by a commanding officer in the
5 United States Armed Forces, the West Virginia National Guard, or the National Guard of any other
6 state against a person under such officer's command.

§48-27-403. Emergency protective orders of court; hearings; persons present.

1 (a)(1) Upon the filing of a verified petition under this article, the magistrate court may enter
2 an emergency protective order as it may determine necessary to protect the petitioner or minor
3 children from domestic violence and, upon good cause shown, may do so ex parte without the
4 necessity of bond being given by the petitioner. Clear and convincing evidence of immediate and
5 present danger of abuse to the petitioner or minor children constitutes good cause for the issuance
6 of an emergency protective order pursuant to this section. For purposes of this section, the court
7 may treat a military protective order as clear and convincing evidence of immediate and present
8 danger of abuse to the petitioner or his or her minor children if the military protective order:

9 (A) Is still in effect and has not been terminated; and

10 (B) Was issued against the respondent because the petitioner was a reported victim of
11 domestic abuse by the respondent.

12 (2) If the respondent is not present at the proceeding, the petitioner or the petitioner's legal
13 representative shall certify to the court, in writing, the efforts which have been made to give notice
14 to the respondent or just cause why notice should not be required. Copies of medical reports or
15 records may be admitted into evidence to the same extent as though the original reports or
16 records. The custodian of the records is not required to be present to authenticate the records for
17 any proceeding held pursuant to this subsection. If the magistrate court determines to enter an
18 emergency protective order, the order shall prohibit the respondent from possessing firearms.

19 (b) Following the proceeding, the magistrate court shall order a copy of the petition to be
20 served immediately upon the respondent, together with a copy of any emergency protective order
21 entered pursuant to the proceedings, a notice of the final hearing before the family court, and a
22 statement of the right of the respondent to appear and participate in the final hearing, as provided
23 in subsection (d) of this section. Copies of any order entered under the provisions of this section,
24 a notice of the final hearing before the family court, and a statement of the right of the petitioner
25 to appear and participate in the final hearing, as provided in subsection (d) of this section, shall
26 also be delivered to the petitioner. Copies of any order entered shall also be delivered to any law-
27 enforcement agency having jurisdiction to enforce the order, including municipal police, the county
28 sheriff's office and local office of the State Police, within 24 hours of the entry of the order. An
29 emergency protective order is effective until modified by order of the family court upon hearing as
30 provided in subsection (d) of this section. The order is in full force and effect in every county in
31 this state.

32 (c) Subsequent to the entry of the emergency protective order, service on the respondent,
33 and the delivery to the petitioner and law-enforcement officers, the court file shall be transferred
34 to the office of the clerk of the circuit court for use by the family court.

35 (d) The family court shall schedule a final hearing on each petition in which an emergency
36 protective order has been entered by a magistrate. The hearing shall be scheduled not later than
37 10 days following the entry of the order by the magistrate. The notice of the final hearing shall be
38 served on the respondent and delivered to the petitioner, as provided in subsection (b) of this
39 section, and must set forth the hearing date, time, and place and include a statement of the right
40 of the parties to appear and participate in the final hearing. The notice must also provide that the
41 petitioner's failure to appear will result in a dismissal of the petition and that the respondent's
42 failure to appear may result in the entry of a protective order against him or her for a period of 90
43 or 180 days, as determined by the court. The notice must also include the name, mailing address,
44 physical location, and telephone number of the family court having jurisdiction over the
45 proceedings. To facilitate the preparation of the notice of final hearing required by the provisions
46 of this subsection, the family court must provide the magistrate court with a day and time in which
47 final hearings may be scheduled before the family court within the time required by law.

48 (e) Upon final hearing the petitioner must prove, by a preponderance of the evidence, the
49 allegation of domestic violence or that he or she reported or witnessed domestic violence against
50 another and has, as a result, been abused, threatened, harassed, or has been the subject of other
51 actions to attempt to intimidate him or her, or the petition shall be dismissed by the family court.
52 If the respondent has not been served with notice of the emergency protective order, the hearing
53 may be continued to permit service to be effected. The failure to obtain service upon the
54 respondent does not constitute a basis to dismiss the petition. Copies of medical reports may be
55 admitted into evidence to the same extent as though the original thereof, upon proper
56 authentication, by the custodian of the records.

57 (f) A person requested by a party to be present during a hearing held under the provisions
58 of this article shall not be precluded from being present unless that person is to be a witness in
59 the proceeding and a motion for sequestration has been made and the motion has been granted.
60 A person found by the court to be disruptive may be precluded from being present.

61 (g) Upon hearing, the family court may dismiss the petition or enter a protective order for
62 a period of 90 days or, in the discretion of the court, for a period of 180 days. The hearing may be
63 continued on motion of the respondent, at the convenience of the court. Otherwise, the hearing
64 may be continued by the court no more than seven days. If a hearing is continued, the family
65 court may modify the emergency protective order as it considers necessary.

66 (h) Notwithstanding any other provision of this code to the contrary, a petition filed pursuant
67 to this section that results in the issuance of an emergency protective order naming a juvenile as
68 the respondent in which the petition for the emergency protective order is filed by or on behalf of
69 the juvenile's parent, guardian or custodian, or other person with whom the juvenile resides shall
70 be treated as a petition authorized by §49-4-704 of this code, alleging the juvenile is a juvenile
71 delinquent: *Provided*, That the magistrate court shall notify the prosecuting attorney in the county
72 where the emergency protective order is issued within 24 hours of the issuance of the emergency
73 protective order and the prosecuting attorney may file an amended verified petition to comply with
74 the provisions of §49-4-704(a) of this code within two judicial days.

ARTICLE 28. UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT.

§48-28-4. Nonjudicial enforcement of order.

1 (a) A law-enforcement officer of this state, upon determining that there is probable cause
2 to believe that a valid foreign protection order exists and that the order has been violated, shall
3 enforce the order as if it were a West Virginia protective order. Presentation of a foreign protection
4 order that identifies both the protected individual and the respondent and that appears, on its face,

5 to be authentic and currently in effect constitutes probable cause to believe that a valid foreign
6 protection order exists. For the purposes of this section, the protection order may be inscribed on
7 a tangible medium or may have been stored in an electronic or other medium if it is retrievable in
8 perceivable form. Presentation of a certified copy of a protection order is not required for
9 enforcement.

10 (b) If a foreign protection order is not presented, a law-enforcement officer of this state
11 may consider other credible information in determining whether there is probable cause to believe
12 that a valid foreign protection order exists.

13 (c) If a law-enforcement officer of this state determines that an otherwise valid foreign
14 protection order cannot be enforced because the respondent has not been notified of or served
15 with the order, the officer shall inform the respondent of the order, make a reasonable effort to
16 serve the order upon the respondent and allow the respondent a reasonable opportunity to comply
17 with the order before enforcing the order.

18 (d) Registration or filing of an order in this state is not required for the enforcement of a
19 valid foreign protection order pursuant to this article.

20 (e)(1) If, in the course of conducting an otherwise lawful arrest of a person who is a
21 member of the United States Armed Forces, the West Virginia National Guard, or the National
22 Guard of any other state, a law-enforcement officer of this state:

23 (A) Determines that a military protective order has been issued against the person subject
24 to arrest and that said order is registered in the Federal Bureau of Investigation's National Crime
25 Information Center database; and

26 (B) Has probable cause to believe that the person subject to arrest has violated the military
27 protective order;

28 The law-enforcement officer shall notify the law-enforcement agency that entered the
29 military protective order into the National Crime Information Center database of the arrest and the
30 circumstances thereof.

31 (2) For purposes of this subsection, "military protective order" means a protective order
32 issued by a commanding officer in the United States Armed Forces, the West Virginia National
33 Guard, or the National Guard of any other state against a person under such officer's command.

CHAPTER 53. EXTRAORDINARY REMEDIES.

ARTICLE 8. PERSONAL SAFETY ORDERS.

§53-8-1. Definitions.

1 In this article, the following words have the meanings indicated.

2 *Final personal safety order.* — "Final personal safety order" means a personal safety order
3 issued by a magistrate under section seven of this article.

4 *Incapacitated adult.* — "Incapacitated adult" means any person who by reason of physical,
5 mental or other infirmity is unable to physically carry on the daily activities of life necessary to
6 sustaining life and reasonable health.

7 *Law-enforcement officer.* — "Law-enforcement officer" means any duly authorized
8 member of a law-enforcement agency who is authorized to maintain public personal safety and
9 order, prevent and detect crime, make arrests and enforce the laws of the state or any county or
10 municipality thereof, other than parking ordinances.

11 *Military Protective Order.* — "Military protective order" means a protective order issued by
12 a commanding officer in the United States Armed Forces, the West Virginia National Guard, or
13 the National Guard of any other state against a person under such officer's command.

14 *Petitioner.* — "Petitioner" means an individual who files a petition under section four of this
15 article.

16 *Place of employment.* — "Place of employment" includes the grounds, parking areas,
17 outbuildings and common or public areas in or surrounding the place of employment.

18 *Residence.* — "Residence" includes the yard, grounds, outbuildings and common or public
19 areas in or surrounding the residence.

20 *Respondent.* — "Respondent" means an individual alleged in a petition to have committed
21 an act specified in §53-8-4(a) of this code against a petitioner.

22 *School.* — "School" means an educational facility comprised of one or more buildings,
23 including school grounds, a school bus or any school-sponsored function or extracurricular
24 activities. For the purpose of this subdivision, "school grounds" includes the land on which a
25 school is built together with such other land used by students for play, recreation or athletic events
26 while attending school. "Extracurricular activities" means voluntary activities sponsored by a
27 school, a county board or an organization sanctioned by a county board or the State Board of
28 Education and include, but are not limited to, preparation for and involvement in public
29 performances, contests, athletic competitions, demonstrations, displays, organizations and clubs.

30 *Sexual offense.* — "Sexual offense" means the commission of the offenses set out in any
31 of the following sections:

32 (A) §61-8-9 of this code;

33 (B) §61-8-12 of this code;

34 (C) §61-8A-2 of this code;

35 (D) §61-8A-4 of this code;

36 (E) §61-8A-5 of this code;

37 (F) §61-8B-3 of this code;

38 (G) §61-8B-4 of this code;

39 (H) §61-8B-5 of this code;

40 (I) §61-8B-7 of this code;

41 (J) §61-8B-8 of this code;

42 (K) §61-8B-9 of this code;

43 (L) §61-8C-2 of this code;

44 (M) §61-8C-3 of this code;

45 (N) §61-8D-3a of this code;

46 (O) §61-8D-5 of this code; and

47 (P) §61-8D-6 of this code.

48 *Temporary personal safety order.* – "Temporary personal safety order" means a personal
49 safety order issued by a magistrate under section five of this article.

§53-8-5. Temporary personal safety orders.

1 (a) *Authorized; forms of relief available.* —

2 (1) If after a hearing on a petition, whether ex parte or otherwise, a magistrate finds that
3 there is reasonable cause to believe that the respondent has committed an act specified in §53-
4 8-4(a) of this code, against the petitioner, the magistrate shall issue a temporary personal safety
5 order to protect the petitioner.

6 (2) The temporary personal safety order may include any or all of the following relief:

7 (A) Order the respondent to refrain from committing or threatening to commit an act
8 specified in §53-8-4(a) of this code against the petitioner;

9 (B) Order the respondent to refrain from contacting, attempting to contact or harassing the
10 petitioner directly, indirectly or through third parties regardless of whether those third parties know
11 of the order;

12 (C) Order the respondent to refrain from entering the residence of the petitioner;

13 (D) Order the respondent to remain away from the place of employment, school or
14 residence of the petitioner: *Provided*, That when the respondent is alleged to have committed an
15 act specified in §53-8-4(a)(2) of this code, the magistrate may not prohibit the respondent from
16 entering the respondent's place of employment;

17 (E) Order the respondent not to visit, assault, molest or otherwise interfere with the
18 petitioner and, if the petitioner is a child, the petitioner's siblings and minors residing in the
19 household of the petitioner;

20 (F) The court, in its discretion, may prohibit a respondent from possessing a firearm as
21 defined in §61-7-7 of this code if:

22 (i) A weapon was used or threatened to be used in the commission of the offense
23 predicated the petitioning for the personal safety order;

24 (ii) The respondent has violated any prior order as specified under this article; or

25 (iii) The respondent has been convicted of an offense involving the use of a firearm;

26 (G) Order either party to pay filing fees and costs of a proceeding pursuant to section
27 thirteen of this article.

28 (3) If the magistrate issues an order under this section, the order shall contain only the
29 relief necessary to protect the petitioner.

30 (4) For purposes of issuing a temporary personal safety order under this section, a
31 magistrate may treat a military protective order as reasonable cause to believe that the
32 respondent has committed an act specified in §53-8-4(a) of this code against the petitioner if the
33 military protective order:

34 (A) Is still in effect and has not been terminated; and

35 (B) Was issued against the respondent because the respondent committed an act
36 specified in §53-8-4(a) of this code against the petitioner.

37 (b) *Immediate*. — The temporary personal safety order shall be immediately served on the
38 respondent by law enforcement, or at the option of the petitioner, pursuant to rules promulgated
39 pursuant to section fifteen of this article.

40 (c) *Length of effectiveness*. —

41 (1) The temporary personal safety order shall be effective for not more than 10 days after
42 service of the order.

43 (2) The magistrate may extend the temporary personal safety order to effectuate service
44 of the order or for other good cause. The failure to obtain service upon the respondent does not
45 constitute a basis to dismiss the petition.

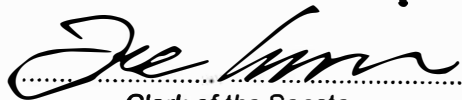
46 (d) *Final personal safety order hearing*. — The magistrate may proceed with a final
47 personal safety order hearing instead of a temporary personal safety order hearing if:

- 48 (1) (A) The respondent appears at the hearing; or
- 49 (B) The court otherwise has personal jurisdiction over the respondent; and
- 50 (2) The petitioner and the respondent expressly consent to waive the temporary personal
- 51 safety order hearing.

Enr CS for HB 4366

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.


Clerk of the House of Delegates


Clerk of the Senate

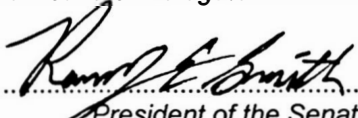
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

FILED

Originated in the House of Delegates.

In effect 90 days from passage.


Speaker of the House of Delegates


President of the Senate

The within isapproved..... this the.....25th.....
Day ofMarch....., 2026.


Governor

PRESENTED TO THE GOVERNOR

MAR 10

Time 10:00 am