

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2347**

4 (By Delegates Iaquinta, Crosier, Skaff, Lawrence, Fragale,  
5 Marshall, Rowan, Border and Talbott  
6

7 (Originating in the Committee on the Judiciary)

8 [February 8, 2011]  
9

10 A BILL to amend and reenact §48-27-505 of the Code of West  
11 Virginia, 1931, as amended, relating to increasing the  
12 effective period for domestic violence protective orders;  
13 increasing the effective period for domestic violence  
14 protective orders in cases not involving aggravating factors  
15 from 90 days or 6 months to 6 months or 1 year; and increasing  
16 the effective period for a domestic violence protective order  
17 in cases where aggravating factors are proven from one year to  
18 two years.

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

20 That §48-27-505 of the Code of West Virginia, 1931, as  
21 amended, be amended and reenacted to read as follows:

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

23 **§48-27-505. Time period a protective order is in effect;**  
24 **extension of order; notice of order or extension.**

25 (a) Except as otherwise provided in subsection (d), section  
26 four hundred one of this article, a protective order, entered by

1 the family court pursuant to this article, is effective for either  
2 ~~ninety days or~~ one hundred eighty days or one year, in the  
3 discretion of the court. Upon receipt of a written request for  
4 renewal from the petitioner prior to the expiration of the original  
5 order, the family court shall extend its order for an additional  
6 ninety-day period.

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

12 (1) That there has been a material violation of a previously  
13 entered protective order;

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

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

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

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

1 of this article.

2 (c) The court may extend a protective order entered pursuant  
3 to subsection (b) of this section for whatever period the court  
4 considers necessary to protect the physical safety of the  
5 petitioner or those persons for whom a petition may be filed as  
6 provided in subdivision (2), section three hundred five of this  
7 article, if the court finds by a preponderance of evidence, after  
8 a hearing of which respondent has been given notice, that:

9 (1) A material violation of the existing protective order has  
10 occurred; or

11 (2) Respondent has committed a material violation of a  
12 provision of a final order entered pursuant to subsection (c),  
13 section six hundred eight, article five of this chapter has  
14 occurred.

15 (d) To be effective, a written request to renew a ~~ninety~~ or  
16 one hundred eighty-day or one year order must be submitted to the  
17 court prior to the expiration of the original order period. A  
18 notice of the extension shall be sent by the clerk of the court to  
19 the respondent by first-class mail, addressed to the last known  
20 address of the respondent as indicated by the court file. The  
21 extension of time is effective upon mailing of the notice.

22 (e) Certified copies of any order entered or extension notice  
23 made under the provisions of this section shall be served upon the  
24 respondent by first class mail, addressed to the last known address  
25 of the respondent as indicated by the court file, and delivered to  
26 the petitioner and any law-enforcement agency having jurisdiction

1 to enforce the order, including the city police, the county  
2 sheriff's office or local office of the West Virginia State Police  
3 within twenty-four hours of the entry of the order. The protective  
4 order shall be in full force and effect in every county of this  
5 state.

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

8 (g) The clerk of the circuit court shall cause a copy of any  
9 protective order entered by the family court pursuant to the  
10 provisions of this article or pursuant to the provisions of chapter  
11 forty-eight of this code to be forwarded to the magistrate or  
12 magistrate court clerk and the magistrate or magistrate court clerk  
13 shall forward a copy of the protective order to the appropriate  
14 state and federal agencies for registration of domestic violence  
15 offenders as required by state and federal law.