

COMMITTEE SUBSTITUTE

FOR

H. B. 2346

(BY DELEGATES MILEY, BROWN, FERRO AND MOORE)

(Originating in the House Committee on the Judiciary)
[February 8, 2011]

A BILL to amend and reenact §48-27-209 of the Code of West Virginia, 1931, as amended, and to amend and reenact §61-7-7 of said code, all relating to domestic violence protective orders; redefining the term “protective order”; and clarifying when the enforcement of firearms possession prohibition can occur after a domestic violence protective order is issued.

Be it enacted by the Legislature of West Virginia:

That §48-207-209 of the Code of West Virginia, 1931, as amended, be amended and reenacted, and that §61-7-7 of said code be amended and reenacted, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. DOMESTIC RELATIONS.

§48-27-209. Protective order defined.

1 “Protective order” means an emergency protective order
2 entered by a magistrate, family court judge or circuit court
3 judge as a result of the emergency hearing, or a final
4 protective order entered by a family court judge or circuit
5 court judge upon final hearing.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT

ARTICLE 7. DANGEROUS WEAPONS.

**§61-7-7. Persons prohibited from possessing firearms;
classifications; reinstatement of rights to possess;
offenses; penalties.**

1 (a) Except as provided in this section, no person shall
2 possess a firearm, as such is defined in section two of this
3 article, who:

4 (1) Has been convicted in any court of a crime punishable
5 by imprisonment for a term exceeding one year;

6 (2) Is habitually addicted to alcohol;

7 (3) Is an unlawful user of or habitually addicted to any
8 controlled substance;

9 (4) Has been adjudicated as a mental defective or who
10 has been involuntarily committed to a mental institution
11 pursuant to the provisions of chapter twenty-seven of this
12 code: *Provided*, That once an individual has been adjudicated
13 as a mental defective or involuntarily committed to a mental
14 institution, he or she shall be duly notified that they are to
15 immediately surrender any firearms in their ownership or
16 possession: *Provided, however*, That the mental hygiene
17 commissioner or circuit judge shall first make a
18 determination of the appropriate public or private individual
19 or entity to act as conservator for the surrendered property;

20 (5) Is an alien illegally or unlawfully in the United States;

21 (6) Has been discharged from the armed forces under
22 dishonorable conditions;

23 (7) Is subject to a domestic violence protective order ~~that:~~

24 ~~(A) Was issued after a hearing of which such person~~
25 ~~received actual notice and at which such person had an~~
26 ~~opportunity to participate~~ as defined by section two-hundred-
27 nine, article twenty-seven, chapter forty-eight of the code,

28 and has received notice or service pursuant to section one
29 thousand-three of that article;

30 (B) Restrains such person from harassing, stalking or
31 threatening an intimate partner of such person or child of
32 such intimate partner or person, or engaging in other conduct
33 that would place an intimate partner in reasonable fear of
34 bodily injury to the partner or child; and

35 (C)(i) Includes a finding that such person represents a
36 credible threat to the physical safety of such intimate partner
37 or child; or

38 (ii) By its terms explicitly prohibits the use, attempted
39 use or threatened use of physical force against such intimate
40 partner or child that would reasonably be expected to cause
41 bodily injury; or

42 (8) Has been convicted of a misdemeanor offense of
43 assault or battery either under the provisions of section
44 twenty-eight, article two of this chapter or the provisions of
45 subsection (b) or (c), section nine of said article in which the
46 victim was a current or former spouse, current or former

47 sexual or intimate partner, person with whom the defendant
48 has a child in common, person with whom the defendant
49 cohabits or has cohabited, a parent or guardian, the
50 defendant's child or ward or a member of the defendant's
51 household at the time of the offense or has been convicted in
52 any court of any jurisdiction of a comparable misdemeanor
53 crime of domestic violence.

54 Any person who violates the provisions of this subsection
55 shall be guilty of a misdemeanor and, upon conviction
56 thereof, shall be fined not less than one hundred dollars nor
57 more than one thousand dollars or confined in the county jail
58 for not less than ninety days nor more than one year, or both.

59 (b) Notwithstanding the provisions of subsection (a) of
60 this section, any person:

61 (1) Who has been convicted in this state or any other
62 jurisdiction of a felony crime of violence against the person
63 of another or of a felony sexual offense; or

64 (2) Who has been convicted in this state or any other
65 jurisdiction of a felony controlled substance offense

66 involving a Schedule I controlled substance other than
67 marijuana, a Schedule II or a Schedule III controlled
68 substance as such are defined in sections two hundred four,
69 two hundred five and two hundred six, article two, chapter
70 sixty-a of this code and who possesses a firearm as such is
71 defined in section two of this article shall be guilty of a
72 felony and, upon conviction thereof, shall be confined in a
73 state correctional facility for not more than five years or fined
74 not more than five thousand dollars, or both. The provisions
75 of subsection (c) of this section shall not apply to persons
76 convicted of offenses referred to in this subsection or to
77 persons convicted of a violation of this subsection.

78 (c) Any person prohibited from possessing a firearm by
79 the provisions of subsection (a) of this section may petition
80 the circuit court of the county in which he or she resides to
81 regain the ability to possess a firearm and if the court finds
82 by clear and convincing evidence that the person is
83 competent and capable of exercising the responsibility
84 concomitant with the possession of a firearm, the court may

85 enter an order allowing the person to possess a firearm if
86 such possession would not violate any federal law: *Provided,*
87 That a person prohibited from possessing a firearm by the
88 provisions of subdivision (4), subsection (a) of this section
89 may petition to regain the ability to possess a firearm in
90 accordance with the provisions of section five, article seven-a
91 of this chapter.