

COMMITTEE SUBSTITUTE

FOR

H. B. 2347

(BY DELEGATES IAQUINTA, CROSIER, SKAFF, LAWRENCE,
FRAGALE, MARSHALL, ROWAN, BORDER AND TALBOTT)

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-505. Time period a protective order is in effect; extension 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 or one year, in the discretion of the court. Upon receipt of
6 a written 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 two years if the court finds by a preponderance of the
12 evidence, after a hearing that any of the following
13 aggravating factors are present:

14 (1) That there has been a material violation of a
15 previously 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 order
24 of protection; or

25 (5) That the totality of the circumstances presented to the
26 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 physical

33 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 or one year order must be
46 submitted to the court prior to the expiration of the original
47 order period. A notice of the extension shall be sent by the
48 clerk of the court to the respondent by first-class mail,
49 addressed to the last known address of the respondent as
50 indicated by the court file. The extension of time is
51 effective upon 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 to
55 the last known address of the respondent as indicated by
56 the court file, and delivered to the petitioner and any law-
57 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 this
62 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 provisions
68 of chapter forty-eight of this code to be forwarded to the
69 magistrate or magistrate court clerk and the magistrate or
70 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.