

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 225

BY SENATORS TRUMP AND BLAIR

[Originating in the Committee on the Judiciary;

reported on February 24, 2017]

1 A BILL to amend and reenact §48-27-402 of the Code of West Virginia, 1931, as amended,
2 relating to permitting magistrates to modify, through a domestic violence protective order,
3 a temporary custody order of the family court in circumstances where violence against a
4 minor child or children is alleged.

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, ~~or~~
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, ~~or~~ 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, ~~or~~ separate maintenance
5 or 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 ~~or~~ 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.