

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2057

By Delegates D. Smith and B. Smith

[Introduced February 12, 2025; referred
to the Committee on the Judiciary]

1 A BILL 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, as amended, relating to military interpersonal violence.

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 defined.

1 (a) "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 (b) "Military protection order" means a protection order issued pursuant to
5 10 U.S.C. § 1567, as amended from time to time, by a commanding officer in the Armed Forces of
6 the United States or the West Virginia National Guard or the National Guard of any other state
7 against a person under such officer's command.

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

1 (a) Upon the filing of a verified petition under this article, the magistrate court may enter an
2 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, a military
7 protection order issued to a protected person because the person was a reported victim of an
8 offense of domestic abuse constitutes sufficient information for a court to find there is an
9 immediate and present danger of abuse to the petitioner or minor children. If the respondent is not
10 present at the proceeding, the petitioner or the petitioner's legal representative shall certify to the
11 court, in writing, the efforts which have been made to give notice to the respondent or just cause

12 why notice should not be required. Copies of medical reports or records may be admitted into
13 evidence to the same extent as though the original reports or records. The custodian of the
14 records is not required to be present to authenticate the records for any proceeding held pursuant
15 to this subsection. If the magistrate court determines to enter an emergency protective order, the
16 order shall prohibit the respondent from possessing firearms.

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

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

33 (d) The family court shall schedule a final hearing on each petition in which an emergency
34 protective order has been entered by a magistrate. The hearing shall be scheduled not later than
35 10 days following the entry of the order by the magistrate. The notice of the final hearing shall be
36 served on the respondent and delivered to the petitioner, as provided in subsection (b) of this
37 section, and must set forth the hearing date, time, and place and include a statement of the right of

the parties to appear and participate in the final hearing. The notice must also provide that the petitioner's failure to appear will result in a dismissal of the petition and that the respondent's failure to appear may result in the entry of a protective order against him or her for a period of 90 or 180 days, as determined by the court. The notice must also include the name, mailing address, physical location, and telephone number of the family court having jurisdiction over the proceedings. To facilitate the preparation of the notice of final hearing required by the provisions of this subsection, the family court must provide the magistrate court with a day and time in which final hearings may be scheduled before the family court within the time required by law.

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

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

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

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

(a) A law-enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were a West Virginia protective order. Presentation of a foreign protection order that identifies both the protected individual and the respondent and that appears, on its face, to be authentic and currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

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

(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) If a law-enforcement officer in this state determines a military protection order
21 registered in the Federal Bureau of Investigation's National Crime Information Center database
22 has been issued against any person subject to arrest who is a member of, or otherwise associated
23 with, the armed forces of the United States, the officer shall notify the law enforcement agency that
24 entered the military protection order into the National Crime Information Center database that the
25 law enforcement officer has probable cause to believe the service member has violated the
26 military protection officer.

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 (1) *Final personal safety order*. -- "Final personal safety order" means a personal safety
3 order issued by a magistrate under section seven of this article.

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

7 (3) *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

municipality thereof, other than parking ordinances.

(4) Military Protection Order. — "Military protection order" means a protection order issued pursuant to 10 U.S.C. § 1567, as amended from time to time, by a commanding officer in the armed forces of the United States or the West Virginia National Guard or the National Guard of any other state against a person under such officer's command.

(4) (5) Petitioner. — "Petitioner" means an individual who files a petition under section four of this article.

(5) (6) Place of employment. — "Place of employment" includes the grounds, parking areas, outbuildings and common or public areas in or surrounding the place of employment.

(6) (7) Residence. — "Residence" includes the yard, grounds, outbuildings and common or public areas in or surrounding the residence.

(7) (8) Respondent. — "Respondent" means an individual alleged in a petition to have committed an act specified in subsection (a), ~~section four of this article~~ §53-8-4(a) of this code against a petitioner.

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

(9) (10) Sexual offense. — "Sexual offense" means the commission of any of the following sections:

(A) ~~Section nine, article eight, chapter sixty-one~~ §61-8-9 of this code;

(B) ~~Section twelve, article eight, chapter sixty-one~~ §61-8-12 of this code;

- (C) ~~Section two, article eight-a, chapter sixty-one~~ §61-8A-2 of this code;
- (D) ~~Section four, article eight-a, chapter sixty-one~~ §61-8A-4 of this code;
- (E) ~~Section five, article eight-a, chapter sixty-one~~ §61-8A-5 of this code;
- (F) ~~Section three, article eight-b, chapter sixty-one~~ §61-8B-3 of this code;
- (G) ~~Section four, article eight-b, chapter sixty-one~~ §61-8B-4 of this code;
- (H) ~~Section five, article eight-b, chapter sixty-one~~ §61-8B-5 of this code;
- (I) ~~Section seven, article eight-b, chapter sixty-one~~ §61-8B-7 of this code;
- (J) ~~Section eight, article eight-b, chapter sixty-one~~ §61-8B-8 of this code;
- (K) ~~Section nine, article eight-b, chapter sixty-one~~ §61-8B-9 of this code;
- (L) ~~Section two, article eight-c, chapter sixty-one~~ §61-8C-2 of this code;
- (M) ~~Section three, article eight-c, chapter sixty-one~~ §61-8C-3 of this code;
- (N) ~~Section three-a, article eight-d, chapter sixty-one~~ §61-8D-3(a) of this code;
- (O) ~~Section five, article eight-d, chapter sixty-one~~ §61-8D-5 of this code; and
- (P) ~~Section six, article eight-d, chapter sixty-one~~ §61-8D-6 of this code.

~~(40)~~ (11) *Temporary personal safety order.* – "Temporary personal safety order" means a personal safety order issued by a magistrate under section five of this article.

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

(a) *Authorized; forms of relief available.* --

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

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

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

(B) Order the respondent to refrain from contacting, attempting to contact or harassing the

petitioner directly, indirectly or through third parties regardless of whether those third parties know of the order;

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

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

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

(F) The court, in its discretion, may prohibit a respondent from possessing a firearm as defined in ~~section seven, article seven, chapter sixty-one~~ §61-7-7 of this code if:

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

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

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

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

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

(4) For purposes of this section, a military protection order issued to a protected person because the person was a reported victim of an offense specified in §53-8-4(a) against the petitioner constitutes sufficient information for the magistrate to find there are reasonable grounds to believe that the respondent has committed an act specified in §53-8-4(a).

(b) *Immediate*. — The temporary personal safety order shall be immediately served on the

respondent by law enforcement, or at the option of the petitioner, pursuant to rules promulgated pursuant to section fifteen of this article.

(c) *Length of effectiveness.* --

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

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

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

(1) (A) The respondent appears at the hearing; or

(B) The court otherwise has personal jurisdiction over the respondent; and

(2) The petitioner and the respondent expressly consent to waive the temporary personal safety order hearing.

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NOTE: The purpose of this bill is to provide that military protection orders may be considered as evidence of need for an emergency protective order or personal safety order and to require law enforcement to make certain notifications when arresting someone who has a military protective order entered against them in the Federal Bureau of Investigation's National Crime Information Center database.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.