

HB 4013

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

Com. Sub. for
HOUSE BILL NO. 4013

(By Delegate Mr. Speaker, Mr. Chambers, & Del. Burk)
[By Request of the Executive]



Passed March 2, 1994

In Effect 90 Days From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4013
(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE BURK)
[By Request of the Executive]

[Passed March 2, 1994; in effect ninety days from passage.]

AN ACT to amend and reenact sections six, ten and fourteen, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article two, chapter sixty-one of said code by adding thereto a new section, designated section twenty-eight, all relating to the prevention of domestic violence; extending the period of time for which protective orders may be effective; changing certain terminology; mandating law-enforcement officers to make arrests for observed violations of protective orders; authorizing certain other individuals to seek a warrant for the arrest of a person violating a protective order; revising the provisions governing the arrest of persons alleged to have committed certain crimes against family or household members; defining the term "credible corroborative evidence"; creating new crimes and providing penalties therefor; and prohibiting actions for false arrest or unlawful detention against officers affecting arrests in connection with crimes involving domestic violence.

Be it enacted by the Legislature of West Virginia:

That sections six, ten and fourteen, article two-a, chapter

forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article two, chapter sixty-one of said code be amended by adding thereto a new section, designated section twenty-eight, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.

§48-2A-6. Protective orders.

1 (a) At the conclusion of the hearing and if the
2 petitioner has proven the allegations of abuse by a
3 preponderance of the evidence, then the court shall issue
4 a protective order which shall direct the respondent to
5 refrain from abusing the petitioner and/or the minor
6 children. The terms of a protective order may include:

7 (1) Granting possession to the petitioner of the
8 residence or household jointly resided in at the time the
9 abuse occurred;

10 (2) Awarding temporary custody of or establishing
11 temporary visitation rights with regard to minor
12 children;

13 (3) Establishing temporary visitation rights with
14 regard to the minor children and requiring third party
15 supervision of visitations if necessary to protect the
16 petitioner and/or the minor children;

17 (4) Ordering the noncustodial parent to pay to the
18 custodial parent a sum for temporary support and
19 maintenance of the petitioner and children, if any;

20 (5) Ordering the respondent to pay to the petitioner
21 a sum for temporary support and maintenance of the
22 petitioner, where appropriate;

23 (6) Ordering the respondent to refrain from entering
24 the school, business or place of employment of the
25 petitioner or household members or family members for
26 the purpose of violating the protective order;

27 (7) Directing the respondent to participate in counsel-
28 ing; or

29 (8) Ordering the respondent to refrain from contact-
30 ing, telephoning, communicating, harassing or verbally
31 abusing the petitioner in any public place.

32 (b) Any final protective order shall be for a fixed
33 period of time not to exceed ninety days: *Provided*, That
34 if a party has filed for divorce, separate maintenance or
35 annulment and no temporary or final divorce order is
36 entered prior to expiration of the protective order, upon
37 petitioner's motion, the protective order shall remain in
38 effect until such temporary or final divorce order is
39 entered. The court may amend its order at any time
40 upon subsequent petition filed by either party. If the
41 court enters an initial order for a period of less than
42 ninety days, it shall, after notice and hearing, extend its
43 initial order for the full ninety-day period if it finds the
44 petitioner or the minor child or children continue to
45 need protection from abuse. The order shall be in full
46 force and effect in every county in this state. The order
47 shall state that it is in full force and effect in every
48 county in this state.

49 (c) No order under this article shall in any manner
50 affect title to any real property.

51 (d) Certified copies of any order made under the
52 provisions of this section shall be issued to the petitioner,
53 the respondent and any law-enforcement agency having
54 jurisdiction to enforce the order, including the city
55 police, the county sheriff's office or local office of the
56 division of public safety within twenty-four hours of the
57 entry of the order.

58 (e) No mutual protective orders shall be granted
59 unless both parties have filed a petition under section
60 four of this article and have proven the allegations of
61 abuse by a preponderance of the evidence.

**§48-2A-10. Enforcement procedure for temporary and
final protective orders.**

1 (a) Upon issuance of a temporary order as provided
2 in section five of this article, and service thereof upon
3 the respondent, or under relief granted in a protective
4 order as provided in subsections (a) and (b), section six

5 of this article of which the respondent has notice, a copy
6 of such order shall, no later than the close of the next
7 business day, be delivered by the court or the clerk to
8 a local office of the city police, the county sheriff and
9 the West Virginia division of public safety, where it
10 shall be placed in a confidential file, with access
11 provided only to the law-enforcement agency and the
12 respondent named on said order: *Provided*, That upon
13 the expiration of any order issued pursuant to section
14 five or six of this article, any such law-enforcement
15 agency which has any such order on file shall imme-
16 diately expunge its confidential file of any reference
17 thereto and destroy all copies of such order in its
18 possession, custody or control. A sworn affidavit may be
19 executed by the party awarded exclusive possession of
20 the residence or household, pursuant to an order entered
21 under subsection (b), section six of this article, and
22 delivered to such law-enforcement agency simultane-
23 ously with any such order, giving his or her consent for
24 a law-enforcement officer to enter such residence or
25 household, without a warrant, to enforce such protective
26 order or temporary order. Orders shall be promptly
27 served upon the respondent. Failure to serve shall not
28 stay the effect of a valid order if the respondent has
29 actual notice of the existence and contents of the order.

30 (b) Any person who observes a violation of such order
31 or the violated party may call a local law-enforcement
32 agency, which shall verify the existence of a current
33 order, and shall direct a law-enforcement officer to
34 promptly investigate the alleged violation.

35 (c) Where a law-enforcement officer observes a
36 violation of a valid order, he or she shall immediately
37 arrest the subject of the order. In cases of violation of
38 such orders occurring outside the presence of an officer,
39 any person authorized to file a petition under the
40 provisions of section four of this article or a legal
41 guardian or guardian ad litem may apply to a court in
42 session in the county in which the violation occurred or
43 the county in which the order was issued for a warrant
44 of arrest. If the court finds probable cause to believe
45 that a valid order has been violated, the court shall issue

46 such warrant for the arrest of the subject of the order
47 wherever he or she may be found.

48 (d) Where there is an arrest, the officer shall take the
49 arrested person before a court or a magistrate and upon
50 a finding of probable cause to believe a violation of an
51 order has taken place, the court or magistrate shall set
52 a time and place for a hearing, to take place within five
53 days, and serve forthwith upon the alleged violator an
54 order to show cause why he or she should not be held
55 in contempt for violation of the prior order, which unless
56 waived by the defendant shall be by trial by a jury of
57 six persons. The remedies provided by this section shall
58 be limited to violations of a temporary order or
59 protective order entered pursuant to subsection (a) or
60 (b), section six of this article. A respondent who shall
61 abuse the petitioner and/or minor children in knowing
62 and willful violation of the terms of a temporary or final
63 protective order issued under the provisions of this
64 article shall be guilty of a misdemeanor, and, upon
65 conviction thereof, shall be confined in the county jail
66 for a period of not less than one day nor more than one
67 year, which jail term shall include actual confinement
68 of not less than twenty-four hours, and shall be fined not
69 less than two hundred fifty dollars nor more than two
70 thousand dollars.

**§48-2A-14. Arrest in domestic violence matters;
conditions.**

1 (a) Notwithstanding any provision of this code, where
2 a family or household member is alleged to have
3 committed a violation of the provisions of subsection (a)
4 or (b), section twenty-eight, article two, chapter sixty-
5 one of this code against another family or household
6 member, in addition to any other authority to arrest
7 granted by this code, a law-enforcement officer has
8 authority to arrest the alleged perpetrator for said
9 offense when:

10 (1) The law-enforcement officer has observed credible
11 corroborative evidence that the offense has occurred;
12 and

13 (2) The law-enforcement officer has received, from the

14 victim or a witness, a verbal or written allegation of
15 facts constituting a violation of section twenty-eight,
16 article two, chapter sixty-one of this code; or

17 (3) The law-enforcement officer has observed credible
18 evidence that the accused committed the offense.

19 (b) Credible corroborative evidence means evidence
20 that is worthy of belief and corresponds with the
21 allegations of one or more elements of the offense and
22 may include but is not limited to the following
23 conditions:

24 (1) *Condition of the alleged victim.*—One or more
25 contusions, scratches, cuts, abrasions, swellings; missing
26 hair; torn clothing or clothing in disarray consistent
27 with a struggle; observable difficulty in breathing or
28 breathlessness consistent with the effects of choking or
29 a body blow; observable difficulty in movement consist-
30 ent with the effects of a body blow or other unlawful
31 physical contact.

32 (2) *Condition of the accused.*—Physical injury or other
33 conditions similar to those set out for the condition of
34 the victim which are consistent with the alleged offense
35 or alleged acts of self defense by the victim.

36 (3) *Condition of the scene.*—Damaged premises or
37 furnishings; disarray or misplaced objects consistent
38 with the effects of a struggle.

39 (4) *Other conditions.*—Statements by the accused
40 admitting one or more elements of the offense; threats
41 made by the accused in the presence of an officer;
42 audible evidence of a disturbance heard by the dis-
43 patcher or other agent receiving the request for police
44 assistance; written statements by witnesses.

45 (c) Whenever any person is arrested pursuant to
46 subsection (a) of this section, the arrested person shall
47 be taken before a magistrate within the county in which
48 the offense charged is alleged to have been committed
49 in a manner consistent with the provisions of Rule 1 of
50 the Administrative Rules for the Magistrate Courts of
51 West Virginia.

52 (d) Where an arrest for a violation of subsection (c),
 53 section twenty-eight, article two, chapter sixty-one of
 54 this code is authorized pursuant to this section, such
 55 shall constitute prima facie evidence that the person
 56 arrested constitutes a threat or danger to the victim or
 57 other family or household members for the purpose of
 58 setting conditions of bail pursuant to section seventeen-
 59 c, article one-c, chapter sixty-two of this code.

**CHAPTER 61.
 CRIMES AND THEIR PUNISHMENT.**

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-28. Domestic violence. — Criminal acts.

1 (a) *Domestic battery.*—If any family or household
 2 member unlawfully and intentionally makes physical
 3 contact of an insulting or provoking nature with another
 4 family or household member or unlawfully and inten-
 5 tionally causes physical harm to another family or
 6 household member, he or she is guilty of a misdemeanor,
 7 and, upon conviction thereof, shall be confined in jail for
 8 not more than twelve months, or fined not more than
 9 five hundred dollars, or both fined and confined.

10 (b) *Domestic assault.*—If any family or household
 11 member unlawfully attempts to commit a violent injury
 12 of another family or household member or unlawfully
 13 commits an act which places another family or house-
 14 hold member in reasonable apprehension of imme-
 15 diately receiving a violent injury, he or she is guilty of
 16 a misdemeanor, and, upon conviction thereof, shall be
 17 confined in jail for not more than six months, or fined
 18 not more than one hundred dollars, or both fined and
 19 confined.

20 (c) *Third offense.*—A family or household member who
 21 has been convicted of a third or subsequent domestic
 22 battery and/or domestic assault as defined in this
 23 section, assault and/or battery as defined in section nine
 24 of this article when committed against a family or
 25 household member, or any combination of such offenses,
 26 is guilty of a felony if such offense occurs within ten
 27 years of a prior conviction of any of these offenses, and,

28 upon conviction thereof, shall be confined in the
29 penitentiary not less than one nor more than five years
30 and fined not exceeding five hundred dollars.

31 (d) For the purposes of this section the term "family
32 or household member" means "family or household
33 member" as defined in section two, article two-a,
34 chapter forty-eight of this code.

35 (e) A person charged with violation of this section may
36 not also be charged with a violation of subsection (b) or
37 (c), section nine of this article.

38 (f) No law-enforcement officer shall be subject to any
39 civil or criminal action for false arrest or unlawful
40 detention for affecting an arrest pursuant to this section
41 or pursuant to section fourteen, article two-a, chapter
42 forty-eight of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.
Harold E. Eshen
.....
Clerk of the Senate

Joseph D. Kapp
.....
Clerk of the House of Delegates
Walter Burdette
.....
President of the Senate

John Calver
.....
Speaker of the House of Delegates

The within *is approved* this the *11th*
day of *March*, 1994.

Wesley Taylor
.....
Governor



PRESENTED TO THE

GOVERNOR

Date 3/10/94

Time 9:30 am