

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2346**

4 (By Delegates Miley, Brown and Moore)

5
6 (Originating in the House Committee on the Judiciary)

7
8 [February 8, 2011]

9
10 A BILL to amend and reenact §48-27-209 of the Code of West
11 Virginia, 1931, as amended, and to amend and reenact §61-7-7
12 of said code, all relating to domestic violence protective
13 orders; redefining the term "protective order"; and clarifying
14 when the enforcement of firearms possession prohibition can
15 occur after a domestic violence protective order is issued.

16 *Be it enacted by the Legislature of West Virginia:*

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

20 **CHAPTER 48. DOMESTIC RELATIONS.**

21 **ARTICLE 27. DOMESTIC RELATIONS.**

22 **§48-27-209. Protective order defined.**

23 "Protective order" means an emergency protective order entered
24 by a magistrate, family court judge or circuit court judge as a

1 result of the emergency hearing, or a final protective order
2 entered by a family court judge or circuit court judge upon final
3 hearing.

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

5 **ARTICLE 7. DANGEROUS WEAPONS.**

6 **§61-7-7. Persons prohibited from possessing firearms;**

7 **classifications; reinstatement of rights to possess;**

8 **offenses; penalties.**

9 (a) Except as provided in this section, no person shall
10 possess a firearm, as such is defined in section two of this
11 article, who:

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

14 (2) Is habitually addicted to alcohol;

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

17 (4) Has been adjudicated as a mental defective or who has been
18 involuntarily committed to a mental institution pursuant to the
19 provisions of chapter twenty-seven of this code: *Provided*, That
20 once an individual has been adjudicated as a mental defective or
21 involuntarily committed to a mental institution, he or she shall be
22 duly notified that they are to immediately surrender any firearms
23 in their ownership or possession: *Provided, however*, That the
24 mental hygiene commissioner or circuit judge shall first make a

1 determination of the appropriate public or private individual or
2 entity to act as conservator for the surrendered property;

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

4 (6) Has been discharged from the armed forces under
5 dishonorable conditions;

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

7 ~~(A) Was issued after a hearing of which such person received~~
8 ~~actual notice and at which such person had an opportunity to~~
9 ~~participate as defined by section two-hundred-nine, article twenty-~~
10 ~~seven, chapter forty-eight of the code, and has received notice or~~
11 ~~service pursuant to section one thousand-three of that article;~~

12 (B) Restrains such person from harassing, stalking or
13 threatening an intimate partner of such person or child of such
14 intimate partner or person, or engaging in other conduct that would
15 place an intimate partner in reasonable fear of bodily injury to
16 the partner or child; and

17 (C) (i) Includes a finding that such person represents a
18 credible threat to the physical safety of such intimate partner or
19 child; or

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

24 (8) Has been convicted of a misdemeanor offense of assault or

1 battery either under the provisions of section twenty-eight,
2 article two of this chapter or the provisions of subsection (b) or
3 (c), section nine of said article in which the victim was a current
4 or former spouse, current or former sexual or intimate partner,
5 person with whom the defendant has a child in common, person with
6 whom the defendant cohabits or has cohabited, a parent or guardian,
7 the defendant's child or ward or a member of the defendant's
8 household at the time of the offense or has been convicted in any
9 court of any jurisdiction of a comparable misdemeanor crime of
10 domestic violence.

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

16 (b) Notwithstanding the provisions of subsection (a) of this
17 section, any person:

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

21 (2) Who has been convicted in this state or any other
22 jurisdiction of a felony controlled substance offense involving a
23 Schedule I controlled substance other than marijuana, a Schedule II
24 or a Schedule III controlled substance as such are defined in

1 sections two hundred four, two hundred five and two hundred six,
2 article two, chapter sixty-a of this code and who possesses a
3 firearm as such is defined in section two of this article shall be
4 guilty of a felony and, upon conviction thereof, shall be confined
5 in a state correctional facility for not more than five years or
6 fined not more than five thousand dollars, or both. The provisions
7 of subsection (c) of this section shall not apply to persons
8 convicted of offenses referred to in this subsection or to persons
9 convicted of a violation of this subsection.

10 (c) Any person prohibited from possessing a firearm by the
11 provisions of subsection (a) of this section may petition the
12 circuit court of the county in which he or she resides to regain
13 the ability to possess a firearm and if the court finds by clear
14 and convincing evidence that the person is competent and capable of
15 exercising the responsibility concomitant with the possession of a
16 firearm, the court may enter an order allowing the person to
17 possess a firearm if such possession would not violate any federal
18 law: *Provided*, That a person prohibited from possessing a firearm
19 by the provisions of subdivision (4), subsection (a) of this
20 section may petition to regain the ability to possess a firearm in
21 accordance with the provisions of section five, article seven-a of
22 this chapter.