

1 **H. B. 2347**

2
3 (By Delegates Iaquina, Crosier, Skaff,
4 Lawrence, Fragale, Marshall, Rowan,
5 Border and Talbott
6

7 [Introduced January 12, 2011; referred to the
8 Committee on the Judiciary.]
9

10 A BILL to amend and reenact §48-27-505 of the Code of West
11 Virginia, 1931, as amended, relating to increasing the time
12 period of a protective order in domestic violence cases to one
13 year.

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

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

17 **ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.**

18 **§48-27-505. Time period a protective order is in effect;**
19 **extension of order; notice of order or extension.**

20 (a) Except as otherwise provided in subsection (d), section
21 four hundred one of this article, a protective order, entered by
22 the family court pursuant to this article, is effective for either
23 ~~ninety days~~ or one hundred eighty days or one year, in the
24 discretion of the court. Upon receipt of a written request for
25 renewal from the petitioner prior to the expiration of the original
26 order, the family court shall extend its order for an additional

1 ninety-day period.

2 (b) Notwithstanding the provisions of subsection (a), the
3 court may enter a protective order for a period of one year if the
4 court finds by a preponderance of the evidence, after a hearing
5 that any of the following aggravating factors are present:

6 (1) That there has been a material violation of a previously
7 entered protective order;

8 (2) That two or more protective orders have been entered
9 against the respondent within the previous five years;

10 (3) That respondent has one or more prior convictions for
11 domestic battery or assault or a felony crime of violence where the
12 victim was a family or household member;

13 (4) That the respondent has committed a violation of the
14 provisions of section nine-a, article two, chapter sixty-one of
15 this code against a person protected by an existing order of
16 protection; or

17 (5) That the totality of the circumstances presented to the
18 court require a one year period in order to protect the physical
19 safety of the petitioner or those persons for whom a petition may
20 be filed as provided in subdivision (2), section three hundred five
21 of this article.

22 (c) The court may extend a protective order entered pursuant
23 to subsection (b) of this section for whatever period the court
24 considers necessary to protect the physical safety of the

1 petitioner or those persons for whom a petition may be filed as
2 provided in subdivision (2), section three hundred five of this
3 article, if the court finds by a preponderance of evidence, after
4 a hearing of which respondent has been given notice, that:

5 (1) A material violation of the existing protective order has
6 occurred; or

7 (2) Respondent has committed a material violation of a
8 provision of a final order entered pursuant to subsection (c),
9 section six hundred eight, article five of this chapter has
10 occurred.

11 (d) To be effective, a written request to renew a ~~ninety~~ or
12 one hundred eighty-day or one year order must be submitted to the
13 court prior to the expiration of the original order period. A
14 notice of the extension shall be sent by the clerk of the court to
15 the respondent by first-class mail, addressed to the last known
16 address of the respondent as indicated by the court file. The
17 extension of time is effective upon mailing of the notice.

18 (e) Certified copies of any order entered or extension notice
19 made under the provisions of this section shall be served upon the
20 respondent by first class mail, addressed to the last known address
21 of the respondent as indicated by the court file, and delivered to
22 the petitioner and any law-enforcement agency having jurisdiction
23 to enforce the order, including the city police, the county
24 sheriff's office or local office of the West Virginia State Police

1 within twenty-four hours of the entry of the order. The protective
2 order shall be in full force and effect in every county of this
3 state.

4 (f) The family court may modify the terms of a protective
5 order upon motion of either party.

6 (g) The clerk of the circuit court shall cause a copy of any
7 protective order entered by the family court pursuant to the
8 provisions of this article or pursuant to the provisions of chapter
9 forty-eight of this code to be forwarded to the magistrate or
10 magistrate court clerk and the magistrate or magistrate court clerk
11 shall forward a copy of the protective order to the appropriate
12 state and federal agencies for registration of domestic violence
13 offenders as required by state and federal law.

NOTE: The purpose of this bill is to extend the maximum length
of protective orders in domestic violence cases from one hundred
eighty days to one year.

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