

1 **Senate Bill No. 538**

2 (By Senators Palumbo, Laird, Miller and Fitzsimmons)

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4 [Introduced March 14, 2013; referred to the Committee on the  
5 Judiciary.]  
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10 A BILL to amend and reenact §48-27-601 of the Code of West  
11 Virginia, 1931, as amended, relating to disposition of  
12 domestic violence orders; and filing orders with the domestic  
13 violence database rather than law enforcement maintaining a  
14 confidential file.

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

16 That §48-27-601 of the Code of West Virginia, 1931, as  
17 amended, be amended and reenacted to read as follows:

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

19 PART 6. DISPOSITION OF DOMESTIC VIOLENCE ORDERS.

20 **§48-27-601. Transmitting orders to domestic violence database;**  
21 **affidavit as to award of possession of real**  
22 **property; service of order on respondent.**

23 (a) Upon entry of an order pursuant to section 27-403 or part

1 27-501, et seq., or an order entered pursuant to part 5-501, et  
2 seq., granting relief provided for by this article, a copy of the  
3 order shall, ~~no later than the close of the next business day,~~ be  
4 immediately transmitted electronically to the domestic violence  
5 database established pursuant to the provisions of section  
6 twenty-one, article one, chapter fifty-one of this code by the  
7 court or the clerk of the court ~~to a local office of the municipal~~  
8 ~~police, the county sheriff and the West Virginia state police,~~  
9 ~~where it shall be placed in a confidential file, with access~~  
10 ~~provided only to the law-enforcement agency and the respondent~~  
11 ~~named on the order.~~

12 (b) A sworn affidavit may be executed by a party who has been  
13 awarded exclusive possession of the residence or household,  
14 pursuant to an order entered pursuant to section 27-503 and shall  
15 be delivered to ~~such~~ law-enforcement agencies simultaneously with  
16 any order giving the party's consent for a law-enforcement officer  
17 to enter the residence or household, without a warrant, to enforce  
18 the protective order or temporary order.

19 (c) Orders shall be promptly served upon the respondent.  
20 Failure to serve a protective order on the respondent does not stay  
21 the effect of a valid order if the respondent has actual notice of  
22 the existence and contents of the order.

23 (d) Any law-enforcement agency in this state in possession of  
24 or with notice of the existence of an order issued pursuant to the

1 provisions of sections 27-403 or 27-501 of this article or the  
2 provisions of section 5-509 of this chapter which is in effect or  
3 has been expired for thirty days or less that receives a report  
4 that a person protected by ~~such~~ an order has been reported to be  
5 missing shall immediately follow its procedures for investigating  
6 missing persons. No agency or department policy delaying the  
7 beginning of an investigation ~~shall have~~ has any force or effect.

8 (e) The provisions of subsection (d) of this section shall be  
9 applied where a report of a missing person is made which is  
10 accompanied by a sworn affidavit that the person alleged to be  
11 missing was, at the time of his or her alleged disappearance, being  
12 subjected to treatment which meets the definition of domestic  
13 battery or assault set forth in section twenty-eight, article two,  
14 chapter sixty-one of this code.

NOTE: The purpose of this bill is to eliminate law enforcement maintaining a confidential file of protective orders since all courts are complying with §48-27-802 by entering the protective orders in the state's domestic violence database registry.

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