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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

— ● —

ENROLLED

Com. Sub. For
HOUSE BILL No. *2427*

(By Delegates *Brown, Trump, Kessel and*
Brum)

— ● —

Passed *April 19,* 1993

In Effect *Ninety Days From* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2427

(By DELEGATES BROWN, TRUMP, KESSEL AND BRUM)

[Passed April 10, 1993; in effect ninety days from passage.]

AN ACT to amend article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen, relating to telephone authorization for arrest for assault or battery in domestic violence matters; limited on-site arrest authority; limitations on officer liability; applicability of administrative rules; and bail conditions.

Be it enacted by the Legislature of West Virginia:

That article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section fourteen, to read as follows:

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.

§48-2A-14. Telephone authorization for 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 (b)
4 or subsection (c) of section nine, article two, chapter
5 sixty-one of this code against another family or house-
6 hold member, in addition to any other authority to

7 arrest granted by this code, a law-enforcement officer
8 has 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 (2) The law-enforcement officer has obtained a signed
13 statement which has been voluntarily and knowingly
14 executed, from the alleged victim setting forth the
15 essential elements of the offense or has received such a
16 statement from a witness to the alleged violation; and

17 (3) The law-enforcement officer investigating the
18 alleged offense or another law-enforcement officer
19 acting at the request of said officer has received oral or
20 telephonic authorization from a magistrate having
21 jurisdiction over the offense to arrest the alleged
22 perpetrator after the magistrate has been presented
23 with information sufficient to satisfy said magistrate
24 that probable cause exists to believe that the offense was
25 committed.

26 (b) Notwithstanding any provision of this section, upon
27 a determination by the law-enforcement officer that
28 credible corroborative evidence exists to believe that a
29 violation of subsection (b) or (c), section nine, article two,
30 chapter sixty-one has occurred, and upon obtaining a
31 signed statement from the alleged victim or a witness
32 setting forth the essential elements of either offense, or
33 prior to the obtaining of the signed statement but having
34 been earlier presented with verbal evidence sufficient to
35 establish the existence of the essential elements of either
36 offense and being informed of a willingness to execute
37 a signed statement as provided for in subsection (a) of
38 this section, the law-enforcement officer may, if circum-
39 stances exist which convince the law-enforcement officer
40 that a danger exists to the health and safety of the
41 alleged victim, the law-enforcement officer or another
42 person, arrest the alleged perpetrator at the scene of the
43 alleged violation solely for the purpose of protecting the
44 health or safety of the alleged victim, the law-enforce-
45 ment officer or another person at the scene of the
46 violation in order to obtain the signed statement and

47 seek the magistrates authorization for arrest.

48 (c) Any person arrested at the site of the alleged
49 criminal violation pursuant to the provisions of subsec-
50 tion (b) of this section, shall be immediately released if
51 the magistrate fails to authorize arrest or if the alleged
52 victim or the witness refuses to execute the statement
53 provided for in this section. If the magistrate authorizes
54 arrest, all other provisions of this section shall then be
55 applicable.

56 (d) No law-enforcement officer shall be subject to any
57 civil or criminal action for false arrest or unlawful
58 detention for affecting an arrest pursuant to subsection
59 (b) of this section solely due to a magistrate's failure to
60 authorize arrest or due to the fact that the alleged
61 victim or the witness refuses to execute a signed
62 statement as provided for in this section.

63 (e) Whenever any person is arrested pursuant to
64 subsection (a) of this section, the arrested person shall
65 be taken before a magistrate within the county in which
66 the offense charged is alleged to have been committed
67 in a manner consistent with the provisions of Rule 1 of
68 the Administrative Rules for the Magistrate Courts of
69 West Virginia.

70 (f) Upon his or her appearance before the magistrate
71 or circuit court, the person arrested shall be supplied
72 with a written complaint setting forth the facts and
73 circumstances supporting the charge which complies
74 with the provisions of West Virginia Rule of Criminal
75 Procedure 3.

76 (g) The provisions of this section shall not authorize
77 any law-enforcement officer to make an arrest outside
78 of his or her jurisdiction unless otherwise authorized by
79 law.

80 (h) The consideration by a magistrate of a request for
81 arrest authorization made orally or by telephone shall
82 constitute responding in a domestic violence matter as
83 required by Rule 1 of the Administrative Rules for the
84 Magistrate Courts of West Virginia.

85 (i) Where an arrest for a violation of subsection (c) of

86 section nine, article two, chapter sixty-one of this code
87 is authorized pursuant to this section such shall
88 constitute prima facie evidence that the person arrested
89 constitutes a threat or danger to the victim or other
90 family or household members for the purpose of setting
91 conditions of bail pursuant to section seventeen-c, article
92 one-c, chapter sixty-two 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.

[Handwritten Signature]
.....
Clerk of the Senate

Donald L. Zopp
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker of the House of Delegates

The within *is approved* this the *12th*
day of *May*, 1993.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/30/93

Time 3:30pm