

SB 154

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

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COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 154

(By Senator WIEDEBUSCH, ET AL)

PASSED MARCH 9, 1996
In Effect NINETY DAYS FROM Passage

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OFFICE OF WEST VIRGINIA
SENATE CLERK OF STATE

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COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 154

(SENATORS WIEDEBUSCH, LOVE, KIMBLE, SCHOONOVER,
MILLER, OLIVERIO AND MANCHIN, *original sponsors*)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact sections three-a, ten-b, ten-c and ten-d, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section three-b, all relating to prevention of domestic violence; divorce actions; providing for temporary relief by magistrates in cases where a temporary order has been entered in an action for divorce, annulment or separate maintenance; clarifying that it is a crime to abuse a party or children or be physically present at a location in knowing and willful violation of the terms of a protective order whether it is issued by a magistrate, a family law master

or a circuit judge; violations of protective order; criminal complaints; and arrest for violation of protective orders, repeat offenses, penalties.

Be it enacted by the Legislature of West Virginia:

That sections three-a, ten-b, ten-c and ten-d, 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 said article be further amended by adding thereto a new section, designated section three-b, all to read as follows:

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.

§48-2A-3a. Divorce actions.

1 (a) During the pendency of a divorce action, a person
2 may file for and be granted relief provided by this
3 article, until an order is entered in the divorce action
4 pursuant to section thirteen, article two of this chapter.

5 (b) If a person who has been granted relief under this
6 article should subsequently become a party to an action
7 for divorce, separate maintenance or annulment, such
8 person shall remain entitled to the relief provided under
9 this article including the right to file for and obtain any
10 further relief, so long as no temporary order has been
11 entered in the action for divorce, annulment and sepa-
12 rate maintenance, pursuant to section thirteen, article
13 two of this chapter.

14 (c) Except as provided in section three-b of this article
15 for a petition and a temporary emergency protective
16 order, no person who is a party to a pending action for
17 divorce, separate maintenance or annulment in which an
18 order has been entered pursuant to section thirteen,
19 article two of this chapter, shall be entitled to file for or
20 obtain relief against another party to that action under
21 this article until after the entry of a final order which
22 grants or dismisses the action for divorce, annulment or
23 separate maintenance.

24 (d) Notwithstanding the provisions set forth in subsec-

25 tion (b), section six of this article, any order issued
26 pursuant to this section where a subsequent action is
27 filed seeking a divorce, annulment or separate mainte-
28 nance, shall remain in full force and effect by operation
29 of this statute until a temporary or final order is issued
30 pursuant to section thirteen, article two of this chapter
31 or a final order granting or dismissing the action for
32 divorce, annulment or separate maintenance.

**§48-2A-3b. Proceedings in magistrate court when temporary
divorce, annulment or separation order is in
effect.**

1 (a) The provisions of this section apply where a tempo-
2 rary order has been entered by a family law master or
3 judge in an action for divorce annulment or separate
4 maintenance notwithstanding the provisions of subsec-
5 tion (c), section three-a of this article.

6 (b) A person who is a party in an action for divorce,
7 annulment or separate maintenance in which a tempo-
8 rary order has been entered pursuant to section thirteen,
9 article two of this chapter may petition magistrate court
10 for a temporary emergency protective order pursuant to
11 this section for any violation of the provisions of this
12 article occurring after the date of entry of the temporary
13 order.

14 (c) The only relief that a magistrate may award pursu-
15 ant to this section is a temporary emergency protective
16 order directing the respondent to refrain from abusing
17 the petitioner and/or minor children, to order the
18 respondent to refrain from entering the school, business
19 or place of employment of the petitioner or household
20 members or family members for the purpose of violating
21 the protective order and to order the respondent to
22 refrain from contacting, telephoning, communicating,
23 harassing or verbally abusing the petitioner in any
24 public place. Such order may modify an award of
25 custody or visitation only upon a showing, by clear and
26 convincing evidence, of the respondent's abuse of a child,
27 as abuse is defined in section two of this article. Any

28 such modification shall be clearly described in the order
29 as to which party has custody and why custody or
30 visitation arrangements were changed.

31 (d) A copy of any temporary emergency protective
32 order issued by a magistrate pursuant to this section,
33 together with a copy of the petition, shall be transmitted
34 forthwith by mail or by facsimile machine to the family
35 law master before whom the action is pending and to
36 law-enforcement agencies. Upon receipt of the petition
37 and order, the master shall examine its provisions.
38 Within ten days of the magistrate's issuance of the
39 temporary emergency protective order, the master shall
40 issue an order either to extend such emergency protec-
41 tion for a time certain or to vacate the magistrate's
42 order. The master shall forthwith give notice to all
43 parties and to the issuing magistrate court. The magis-
44 trate court clerk shall forward a copy of the master's
45 order to law-enforcement agencies.

46 If no temporary order pursuant to section thirteen,
47 article two, chapter forty-eight of this code has been
48 entered, the master shall forthwith return the order with
49 such explanation to the issuing magistrate. The magis-
50 trate who issued the order shall vacate the order, noting
51 thereon the reason for termination. The magistrate court
52 clerk shall transmit a copy of the vacated order to the
53 parties and law-enforcement agencies.

§48-2A-10b. Violations of protective orders; criminal complaints.

1 (a) When a respondent abuses the petitioner and/or
2 minor children or is physically present at any location in
3 knowing and willful violation of the terms of a tempo-
4 rary or final protective order issued by a magistrate, a
5 circuit court judge or a family law master under the
6 provisions of this article or subdivision (12), subsection
7 (a), section thirteen, article two of this chapter granting
8 the relief pursuant to the provisions of this article, any
9 person authorized to file a petition pursuant to the
10 provisions of section four of this article or the legal

11 guardian or guardian ad litem may file a petition for
12 civil contempt as set forth in section ten-a of this article.

13 (b) When any such violation of a valid order has
14 occurred, the petitioner may file a criminal complaint.
15 If the court finds probable cause upon the complaint, the
16 court shall issue a warrant for arrest of the person
17 charged.

§48-2A-10c. Arrest for violations of protective orders.

1 (a) When a law-enforcement officer observes any
2 respondent abuse the petitioner and/or minor children or
3 the respondent's physical presence at any location in
4 knowing and willful violation of the terms of a tempo-
5 rary or final protective order issued by a magistrate, a
6 circuit court judge or a family law master under the
7 provisions of this article or subdivision (12), subsection
8 (a), section thirteen, article two of this chapter granting
9 the relief pursuant to the provisions of this article, he or
10 she shall immediately arrest the respondent.

11 (b) When a family or household member is alleged to
12 have committed a violation of the provisions of section
13 ten-d of this article, a law-enforcement officer may
14 arrest the perpetrator for said offense where:

15 (1) The law-enforcement officer has observed credible
16 corroborative evidence, as defined in subsection (b),
17 section fourteen of this article, that the offense has
18 occurred; and

19 (2) The law-enforcement officer has received, from the
20 victim or a witness, a verbal or written allegation of the
21 facts constituting a violation of section ten-d of this
22 article; or

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

25 (c) Any person who observes a violation of a protective
26 order as described in this section, or the victim of such
27 abuse or unlawful presence, may call a local law-en-
28 forcement agency, which shall verify the existence of a

29 current order, and shall direct a law-enforcement officer
30 to promptly investigate the alleged violation.

31 (d) Where there is an arrest, the officer shall take the
32 arrested person before a court or a magistrate and, upon
33 a finding of probable cause to believe a violation of an
34 order as set forth in this section has occurred, the court
35 or magistrate shall set a time and place for a hearing in
36 accordance with the West Virginia rules of criminal
37 procedure.

**§48-2A-10d. Misdemeanor offenses for violation of protective
order, repeat offenses, penalties.**

1 (a) A respondent who abuses the petitioner and/or
2 minor children or who is physically present at any
3 location in knowing and willful violation of the terms of
4 a temporary or final protective order issued by a magis-
5 trate, a circuit court judge or a family law master under
6 the provisions of this article or subdivision (12), subsec-
7 tion (a), section thirteen, article two of this chapter
8 granting the relief pursuant to the provisions of this
9 article, is guilty of a misdemeanor, and, upon conviction
10 thereof, shall be confined in the county or regional jail
11 for a period of not less than one day nor more than one
12 year, which jail term shall include actual confinement of
13 not less than twenty-four hours, and shall be fined not
14 less than two hundred fifty dollars nor more than two
15 thousand dollars.

16 (b) When a respondent previously convicted of the
17 offense described in subsection (a) of this section abuses
18 the petitioner and/or minor children or is physically
19 present at any location in knowing and willful violation of
20 the terms of a temporary or final protective order issued
21 under the provisions of this article, the respondent is
22 guilty of a misdemeanor, and, upon conviction thereof,
23 shall be imprisoned in the county or regional jail for not
24 less than three months nor more than one year, which jail
25 term shall include actual confinement of not less than
26 twenty-four hours, and fined not less than five hundred
27 dollars nor more than three thousand dollars, or both.

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

Handwritten signature of Howard Schorover

.....
Chairman Senate Committee

Handwritten signature of Dudley DeLoach

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Handwritten signature of Darrell K. Royal

.....
Clerk of the Senate

Handwritten signature of Gregory W. Bay

.....
Clerk of the House of Delegates

Handwritten signature of Carl Roy Tomblin

.....
President of the Senate

Handwritten signature of Carl Albert

.....
Speaker House of Delegates

The within *is approved* this the *1st*
day of *April*, 1996.

Handwritten signature of Gaston Caperton

.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/96

Time 10:17am