

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 3405

By Delegates Foster, Kump, Kirby and Ridenour

[Originating in the Committee on the Judiciary;

Reported on February 24, 2023]

1 A BILL to amend and reenact §48-27-505 of the Code of West Virginia, 1931, as amended,
2 relating to changing the time period of a protective order extension to one year.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

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

1 (a) Except as otherwise provided in §48-27-401(d) of this code, a protective order, entered
2 by the family court pursuant to this article, is effective for either ninety days or one hundred eighty
3 days, in the discretion of the court. Upon receipt of a written request for renewal from the petitioner
4 prior to the expiration of the original order, the family court shall extend its order for an additional
5 ninety-day period.

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

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

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

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

14 (4) That the respondent has committed a violation of the provisions of §61-2-9a of this code
15 against a person protected by an existing order of protection; or

16 (5) That the totality of the circumstances presented to the court require a one year period in
17 order to protect the physical safety of the petitioner or those persons for whom a petition may be
18 filed as provided §48-27-305(2) of this code.

19 (c) The court may extend a protective order entered pursuant to subsection (b) of this
20 section for whatever period the court considers necessary, but absent extraordinary

21 circumstances, for not more than one year to protect the physical safety of the petitioner or those
22 persons for whom a petition may be filed as provided in subdivision (2), section three hundred five
23 of this article, if the court finds by a preponderance of evidence, after a hearing of which
24 respondent has been given notice, that:

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

26 (2) Respondent has committed a material violation of a provision of a final order entered
27 pursuant to §48-5-608(c) of this code ~~has occurred~~.

28 (d) To be effective, a written request to renew a ninety or one hundred eighty-day order
29 must be submitted to the court prior to the expiration of the original order period. A notice of the
30 extension shall be sent by the clerk of the court to the respondent by first-class mail, addressed to
31 the last known address of the respondent as indicated by the court file. The extension of time is
32 effective upon mailing of the notice.

33 (e) Certified copies of any order entered or extension notice made under the provisions of
34 this section shall be served upon the respondent by first class mail, addressed to the last known
35 address of the respondent as indicated by the court file, and delivered to the petitioner and any
36 law-enforcement agency having jurisdiction to enforce the order, including the city police, the
37 county sheriff's office or local office of the West Virginia State Police within twenty-four hours of the
38 entry of the order. The protective order shall be in full force and effect in every county of this state.

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

40 (g) The clerk of the circuit court shall cause a copy of any protective order entered by the
41 family court pursuant to the provisions of this article or pursuant to the provisions of §48-1-101, *et*
42 *seq.* of this code to be forwarded to the magistrate or magistrate court clerk and the magistrate or
43 magistrate court clerk shall forward a copy of the protective order to the appropriate state and
44 federal agencies for registration of domestic violence offenders as required by state and federal
45 law.

NOTE: The purpose of this bill is to change the time period of a protective order extension to one year.

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