

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**ENGROSSED**

**Committee Substitute**

**for**

**House Bill 4366**

By Delegates D. Smith, Marple, Heckert, Hillenbrand,

Ridenour, Sheedy, and Watt

[Originating in the Committee on the Judiciary;

Reported on January 27, 2026]



1 A BILL to amend and reenact §48-27-209, §48-27-403, §48-28-4, §53-8-1 and §53-8-5 of the  
2 Code of West Virginia, as amended, relating to military interpersonal violence; providing  
3 definitions; clarifying the use of a military protective order in the court system; and clarifying  
4 when a law enforcement officer may report a potential violation of a military order.

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

## **CHAPTER 48. DOMESTIC RELATIONS.**

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

#### **§48-27-209. Protective order defined Definitions.**

1 "Protective order" means an emergency protective order entered by a magistrate as a  
2 result of the emergency hearing or a protective order entered by a family court judge upon final  
3 hearing.

4 "Military protection order" means a protection order issued pursuant to 10 U.S.C. § 1567,  
5 as amended from time to time, by a commanding officer in the armed forces of the United States or  
6 the West Virginia National Guard or the National Guard of any other state against a person under  
7 such officer's command.

#### **§48-27-403. Emergency protective orders of court; hearings; persons present.**

1 (a) Upon the filing of a verified petition under this article, the magistrate court may enter an  
2 emergency protective order as it may determine necessary to protect the petitioner or minor  
3 children from domestic violence and, upon good cause shown, may do so ex parte without the  
4 necessity of bond being given by the petitioner. Clear and convincing evidence of immediate and  
5 present danger of abuse to the petitioner or minor children constitutes good cause for the issuance  
6 of an emergency protective order pursuant to this section. For purposes of this section, a military  
7 protection order, that is still in effect and has not been terminated, that was issued to a protected  
8 person because the person was a reported victim of an offense of domestic abuse may constitute  
9 sufficient evidence for a court to find there is an immediate and present danger of abuse to the

10        petitioner or minor children. If the respondent is not present at the proceeding, the petitioner or the  
11      petitioner's legal representative shall certify to the court, in writing, the efforts which have been  
12      made to give notice to the respondent or just cause why notice should not be required. Copies of  
13      medical reports or records may be admitted into evidence to the same extent as though the  
14      original reports or records. The custodian of the records is not required to be present to  
15      authenticate the records for any proceeding held pursuant to this subsection. If the magistrate  
16      court determines to enter an emergency protective order, the order shall prohibit the respondent  
17      from possessing firearms.

18                (b) Following the proceeding, the magistrate court shall order a copy of the petition to be  
19      served immediately upon the respondent, together with a copy of any emergency protective order  
20      entered pursuant to the proceedings, a notice of the final hearing before the family court, and a  
21      statement of the right of the respondent to appear and participate in the final hearing, as provided  
22      in subsection (d) of this section. Copies of any order entered under the provisions of this section, a  
23      notice of the final hearing before the family court, and a statement of the right of the petitioner to  
24      appear and participate in the final hearing, as provided in subsection (d) of this section, shall also  
25      be delivered to the petitioner. Copies of any order entered shall also be delivered to any law-  
26      enforcement agency having jurisdiction to enforce the order, including municipal police, the county  
27      sheriff's office and local office of the State Police, within 24 hours of the entry of the order. An  
28      emergency protective order is effective until modified by order of the family court upon hearing as  
29      provided in subsection (d) of this section. The order is in full force and effect in every county in this  
30      state.

31                (c) Subsequent to the entry of the emergency protective order, service on the respondent,  
32      and the delivery to the petitioner and law-enforcement officers, the court file shall be transferred to  
33      the office of the clerk of the circuit court for use by the family court.

34                (d) The family court shall schedule a final hearing on each petition in which an emergency  
35      protective order has been entered by a magistrate. The hearing shall be scheduled not later than

36 10 days following the entry of the order by the magistrate. The notice of the final hearing shall be  
37 served on the respondent and delivered to the petitioner, as provided in subsection (b) of this  
38 section, and must set forth the hearing date, time, and place and include a statement of the right of  
39 the parties to appear and participate in the final hearing. The notice must also provide that the  
40 petitioner's failure to appear will result in a dismissal of the petition and that the respondent's  
41 failure to appear may result in the entry of a protective order against him or her for a period of 90 or  
42 180 days, as determined by the court. The notice must also include the name, mailing address,  
43 physical location, and telephone number of the family court having jurisdiction over the  
44 proceedings. To facilitate the preparation of the notice of final hearing required by the provisions of  
45 this subsection, the family court must provide the magistrate court with a day and time in which  
46 final hearings may be scheduled before the family court within the time required by law.

47 (e) Upon final hearing the petitioner must prove, by a preponderance of the evidence, the  
48 allegation of domestic violence or that he or she reported or witnessed domestic violence against  
49 another and has, as a result, been abused, threatened, harassed, or has been the subject of other  
50 actions to attempt to intimidate him or her, or the petition shall be dismissed by the family court. If  
51 the respondent has not been served with notice of the emergency protective order, the hearing  
52 may be continued to permit service to be effected. The failure to obtain service upon the  
53 respondent does not constitute a basis to dismiss the petition. Copies of medical reports may be  
54 admitted into evidence to the same extent as though the original thereof, upon proper  
55 authentication, by the custodian of the records.

56 (f) A person requested by a party to be present during a hearing held under the provisions  
57 of this article shall not be precluded from being present unless that person is to be a witness in the  
58 proceeding and a motion for sequestration has been made and the motion has been granted. A  
59 person found by the court to be disruptive may be precluded from being present.

60 (g) Upon hearing, the family court may dismiss the petition or enter a protective order for a  
61 period of 90 days or, in the discretion of the court, for a period of 180 days. The hearing may be

62 continued on motion of the respondent, at the convenience of the court. Otherwise, the hearing  
63 may be continued by the court no more than seven days. If a hearing is continued, the family court  
64 may modify the emergency protective order as it considers necessary.

65 (h) Notwithstanding any other provision of this code to the contrary, a petition filed pursuant  
66 to this section that results in the issuance of an emergency protective order naming a juvenile as  
67 the respondent in which the petition for the emergency protective order is filed by or on behalf of  
68 the juvenile's parent, guardian or custodian, or other person with whom the juvenile resides shall  
69 be treated as a petition authorized by §49-4-704 of this code, alleging the juvenile is a juvenile  
70 delinquent: *Provided*, That the magistrate court shall notify the prosecuting attorney in the county  
71 where the emergency protective order is issued within 24 hours of the issuance of the emergency  
72 protective order and the prosecuting attorney may file an amended verified petition to comply with  
73 the provisions of §49-4-704(a) of this code within two judicial days.

## **ARTICLE 28. UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT.**

### **§48-28-4. Nonjudicial enforcement of order.**

1 (a) A law-enforcement officer of this state, upon determining that there is probable cause to  
2 believe that a valid foreign protection order exists and that the order has been violated, shall  
3 enforce the order as if it were a West Virginia protective order. Presentation of a foreign protection  
4 order that identifies both the protected individual and the respondent and that appears, on its face,  
5 to be authentic and currently in effect constitutes probable cause to believe that a valid foreign  
6 protection order exists. For the purposes of this section, the protection order may be inscribed on a  
7 tangible medium or may have been stored in an electronic or other medium if it is retrievable in  
8 perceivable form. Presentation of a certified copy of a protection order is not required for  
9 enforcement.

10 (b) If a foreign protection order is not presented, a law-enforcement officer of this state may  
11 consider other credible information in determining whether there is probable cause to believe that  
12 a valid foreign protection order exists.

13 (c) If a law-enforcement officer of this state determines that an otherwise valid foreign  
14 protection order cannot be enforced because the respondent has not been notified of or served  
15 with the order, the officer shall inform the respondent of the order, make a reasonable effort to  
16 serve the order upon the respondent and allow the respondent a reasonable opportunity to comply  
17 with the order before enforcing the order.

18 (d) Registration or filing of an order in this state is not required for the enforcement of a  
19 valid foreign protection order pursuant to this article.

20 (e) If a law enforcement officer in this state determines a military protection order that has  
21 been registered in the Federal Bureau of Investigation's National Crime Information Center  
22 database has been issued against any person subject to arrest who is a member of, or otherwise  
23 associated with, the armed forces of the United States, the officer shall notify the law enforcement  
24 agency that entered the military protection order into the National Crime Information Center  
25 database if the law enforcement officer has probable cause to believe the service member may  
26 have violated the military protection order.

## CHAPTER 53. EXTRAORDINARY REMEDIES.

## ARTICLE 8. PERSONAL SAFETY ORDERS.

§53-8-1.

## Definitions.

1 In this article the following words have the meanings indicated.

(1) *Final personal safety order.* — "Final personal safety order" means a personal safety order issued by a magistrate under section seven of this article.

4                   (2) *Incapacitated adult*. -- "Incapacitated adult" means any person who by reason of  
5 physical, mental or other infirmity is unable to physically carry on the daily activities of life  
6 necessary to sustaining life and reasonable health.

7                   (3) *Law-enforcement officer*. -- "Law-enforcement officer" means any duly authorized  
8 member of a law-enforcement agency who is authorized to maintain public personal safety and  
9 order, prevent and detect crime, make arrests and enforce the laws of the state or any county or  
10 municipality thereof, other than parking ordinances.

11                   *Military Protection Order*. -- "Military protection order" means a protection order issued  
12 pursuant to 10 U.S.C. § 1567, as amended from time to time, by a commanding officer in the  
13 armed forces of the United States or the West Virginia National Guard or the National Guard of any  
14 other state against a person under such officer's command.

15                   (4) *Petitioner*. — "Petitioner" means an individual who files a petition under section four of  
16 this article.

17                   (5) *Place of employment*. -- "Place of employment" includes the grounds, parking areas,  
18 outbuildings and common or public areas in or surrounding the place of employment.

19                   (6) *Residence*. -- "Residence" includes the yard, grounds, outbuildings and common or  
20 public areas in or surrounding the residence.

21                   (7) *Respondent*. -- "Respondent" means an individual alleged in a petition to have  
22 committed an act specified in ~~subsection (a), section four of this article §53-8-4(a) of this code~~  
23 against a petitioner.

24                   (8) *School*. -- "School" means an educational facility comprised of one or more buildings,  
25 including school grounds, a school bus or any school-sponsored function or extracurricular  
26 activities. For the purpose of this subdivision, "school grounds" includes the land on which a  
27 school is built together with such other land used by students for play, recreation or athletic events  
28 while attending school. "Extracurricular activities" means voluntary activities sponsored by a  
29 school, a county board or an organization sanctioned by a county board or the State Board of

30 Education and include, but are not limited to, preparation for and involvement in public  
31 performances, contests, athletic competitions, demonstrations, displays, organizations and clubs.

32 (9) *Sexual offense*. -- "Sexual offense" means the commission of any of the following  
33 sections:

34 (A) ~~Section nine, article eight, chapter sixty-one §61-8-9 of this code;~~  
35 (B) ~~Section twelve, article eight, chapter sixty-one §61-8-12 of this code;~~  
36 (C) ~~Section two, article eight-a, chapter sixty-one §61-8A-2 of this code;~~  
37 (D) ~~Section four, article eight-a, chapter sixty-one §61-8A-4 of this code;~~  
38 (E) ~~Section five, article eight-a, chapter sixty-one §61-8A-5 of this code;~~  
39 (F) ~~Section three, article eight-b, chapter sixty-one §61-8B-3 of this code;~~  
40 (G) ~~Section four, article eight-b, chapter sixty-one §61-8B-4 of this code;~~  
41 (H) ~~Section five, article eight-b, chapter sixty-one §61-8B-5 of this code;~~  
42 (I) ~~Section seven, article eight-b, chapter sixty-one §61-8B-7 of this code;~~  
43 (J) ~~Section eight, article eight-b, chapter sixty-one §61-8B-8 of this code;~~  
44 (K) ~~Section nine, article eight-b, chapter sixty-one §61-8B-9 of this code;~~  
45 (L) ~~Section two, article eight-c, chapter sixty-one §61-8C-2 of this code;~~  
46 (M) ~~Section three, article eight-c, chapter sixty-one §61-8C-3 of this code;~~  
47 (N) ~~Section three-a, article eight-d, chapter sixty-one §61-8D-3(a) of this code;~~  
48 (O) ~~Section five, article eight-d, chapter sixty-one §61-8D-5 of this code; and~~  
49 (P) ~~Section six, article eight-d, chapter sixty-one §61-8D-6 of this code.~~

50 (10) *Temporary personal safety order*. -- "Temporary personal safety order" means a  
51 personal safety order issued by a magistrate under section five of this article.

#### **§53-8-5. Temporary personal safety orders.**

1 (a) *Authorized; forms of relief available*. —

2 (1) If after a hearing on a petition, whether ex parte or otherwise, a magistrate finds that  
3 there is reasonable cause to believe that the respondent has committed an act specified in

4 ~~subsection (a), section four of this article §53-8-4(a) of this code~~, against the petitioner, the  
5 magistrate shall issue a temporary personal safety order to protect the petitioner.

6 (2) The temporary personal safety order may include any or all of the following relief:

7 (A) Order the respondent to refrain from committing or threatening to commit an act  
8 specified in ~~subsection (a), section four of this article §53-8-4(a) of this code~~ against the petitioner;  
9 (B) Order the respondent to refrain from contacting, attempting to contact or harassing the  
10 petitioner directly, indirectly or through third parties regardless of whether those third parties know  
11 of the order;

12 (C) Order the respondent to refrain from entering the residence of the petitioner;

13 (D) Order the respondent to remain away from the place of employment, school or  
14 residence of the petitioner: *Provided*, That when the respondent is alleged to have committed an  
15 act specified in ~~subdivision (2), subsection (a), section four of this article §53-8-4(a)(2) of this code~~,  
16 the magistrate may not prohibit the respondent from entering the respondent's place of  
17 employment;

18 (E) Order the respondent not to visit, assault, molest or otherwise interfere with the  
19 petitioner and, if the petitioner is a child, the petitioner's siblings and minors residing in the  
20 household of the petitioner;

21 (F) The court, in its discretion, may prohibit a respondent from possessing a firearm as  
22 defined in ~~section seven, article seven, chapter sixty-one §61-7-7~~ of this code if:

23 (i) A weapon was used or threatened to be used in the commission of the offense  
24 predicated the petitioning for the personal safety order;

25 (ii) The respondent has violated any prior order as specified under this article; or

26 (iii) The respondent has been convicted of an offense involving the use of a firearm;

27 (G) Order either party to pay filing fees and costs of a proceeding pursuant to section  
28 thirteen of this article.

29 (3) If the magistrate issues an order under this section, the order shall contain only the  
30 relief necessary to protect the petitioner.

31        (4) For purposes of this section, a military protection order, that is still in effect and has not  
32        been terminated, and was issued to a protected person because the person was a reported victim  
33        of an offense specified in §53-8-4(a) of this code against the petitioner may constitute sufficient  
34        evidence for the magistrate to find there are reasonable grounds to believe that the respondent  
35        has committed an act specified in §53-8-4(a) of this code.

39 (c) *Length of effectiveness.* —

40 (1) The temporary personal safety order shall be effective for not more than ten 10 days  
41 after service of the order.

42 (2) The magistrate may extend the temporary personal safety order to effectuate service of  
43 the order or for other good cause. The failure to obtain service upon the respondent does not  
44 constitute a basis to dismiss the petition.

45 (d) *Final personal safety order hearing.* — The magistrate may proceed with a final  
46 personal safety order hearing instead of a temporary personal safety order hearing if:

47 (1) (A) The respondent appears at the hearing; or

48 (B) The court otherwise has personal jurisdiction over the respondent; and

49 (2) The petitioner and the respondent expressly consent to waive the temporary personal  
50 safety order hearing.