WEST VIRGINIA CIVIL PROTECTION ORDERS

Survivors across the country seek safety through civil protection orders. Courts use these vital orders to issue stay away orders, or order an abuser pay medical bills, and even make temporary custody decisions. The remedies are important, but jurisdictions often have several types of orders and the distinctions are not always clear. This resource provides a brief overview of the different types of civil protection orders in each jurisdiction, answering vital questions such as: who can apply; and who can be restrained? The orders included in this resource are limited to those where a survivor can apply themselves, other protective measures may exist in your jurisdiction—reach out to VRLC's TA team if you have questions!

In West Virginia, there are 2 types of civil protection orders:

- ☐ **Prevention and Treatment of Domestic Violence Protective Orders** are available for individuals seeking protection from domestic violence committed by a household member (WV ST § 48-27-101 to 1105).
- ☐ **Personal Safety Orders** are available for individuals who are not eligible for a domestic violence order and are seeking protection from any individual who subjected them to sexual assault, stalking, or threats of bodily injury (WV ST § 53-8-1 to 17).

PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE

Who can apply?	An individual can apply for a protection order for themselves, for a minor child, or incapacitated household member due to the occurrence of **domestic violence** by a **family or household member**. *WV ST § 48-27-202, 48-27-305.* Individuals who reported or witnessed domestic violence and experienced abuse, harassment, threats, or other forms of intimidation as a result can also apply. *WV ST § 48-27-305.* **Family or household members** means persons who: • Are or were married; • Are or were living together as spouses; • Are or were sexual or intimate partners; • Are or were dating, with the caveat that casual acquaintance is not the same as dating; • Are or were residing in the same household; • Have a child in common; or • Are a parent, sibling, child, grandparent, aunt, uncle, niece or nephew, first or second cousin, and all iterations thereof (e.g. stepsibling). *WV ST § 48-27-204.* See "Who Can be Restrained?" for the definition of **domestic violence**.
Can minors apply?	Yes. But a guardian ad litem will be appointed to protect the minor's best interests if: • The minor files without a parent/guardian or next friend; or *continued on next page*

PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE

Can minors apply?	• The abuser (respondent) is the minor's parent or household member, therefore making it unsafe for the child to return to his/her home. *WV § 48-27-305; WV Rules of Practice and Procedure for Domestic Violence, Rule 23a(b).*
Who can be restrained?	Any family or household member who has committed an act of **domestic violence** as defined by WV §§ 48-27-202 and 204. **Domestic violence or abuse** is defined as one of the following acts committed against a family or household member: • Attempting or causing physical harm to another; • Placing another in reasonable apprehension of physical harm; • Creating fear of physical harm by harassment, stalking, psychological abuse, or threatening act; • Committing sexual assault or sexual abuse; or • Confining or abducting another person against their will. *WV ST § 48-27-202.*
What types of relief may a court order?	A protective order must prohibit the respondent from: • Abusing, harassing, stalking, threatening, or otherwise intimidating the petitioner or the minor children, or engaging in other conduct that would place the petitioner or the minor children in reasonable fear of bodily injury; and • Possessing any firearm or ammunition. *WV ST § 48-27-502.* A protective order may also: • Grant possession of a shared residence to the petitioner; *continued on next page*

PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE

What types of relief may a court order?	• Order respondent to stay away from petitioner; • Award temporary custody of or establish temporary visitation rights for minor children; • Establish temporary child or spousal support; • Prohibit respondent from entering the school, business, or workplace of petitioner or their family members; • Order the respondent to participate in an intervention program for perpetrators; • Prohibit respondent from contacting, telephoning, communicating, harassing, or verbally abusing the petitioner; • Provide for either party to obtain personal property, including temporary possession of vehicles; • Require respondent reimburse the petitioner or other person for any expenses incurred as a result of the domestic violence, including, but not limited to, medical expenses, transportation, and shelter; • Prohibit all parties from dealing with property that may be subject to a divorce, support, or other proceeding; • Award the petitioner the exclusive control of any animal owned by the petitioner or a minor child and prohibit respondent from harming said animal; and • Any other relief the court deems necessary to protect the physical safety of petitioner. *WV ST § 48-27-503.* When the person to be protected is a person who reported or witnessed the domestic violence, the protective order may also prohibit the respondent from: • Abusing, contacting, telephoning, communicating, harassing, verbally abusing, or otherwise intimidating the person to be protected; *continued on next page*

PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE

What types of relief may a court order?	• Entering the school, business, or place of employment of the person to be protected for the purpose of violating the protective order; and • Entering or being present in the immediate area of the residence of the petitioner. *WV ST § 48-27-504.*
How long does the order last?	An emergency protective order can be issued at an ex parte hearing and will remain in effect until the final hearing. The final hearing must occur within 10 days. *WV ST § 48-27-403.* A final protection from abuse order lasts for either 90 or 180 days, at the discretion of the court. The order may be entered for 1 year if the court finds certain aggravating factors: material violation of a prior protective order, 2 or more orders entered against the respondent within 5 years, prior convictions for domestic violence, or if the totality of the circumstances require a 1 year order to protect the physical safety of the petitioner. *WV ST §§ 48-27-501 and 505(a); WV ST § 48-27- 505(b).*
Can the order be renewed?	The order can be renewed prior to expiration by request. If a request is filed before the expiration of the order, the judge must extend the order for 90 days. *WV ST § 48-27- 505(a).* The judge may also extend the order for as long as the judge deems necessary (up to the lifetime of the respondent) if there has been a material violation of the protection order or a final protective order entered in a divorce action. *WV ST § 48-27-505(c).*

PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE

Is a hearing with the respondent required?	An emergency order may be granted ex parte. *WV ST § 48-27-403.* A final order may only be granted after a hearing where the respondent is allowed to present evidence. *WV ST § 48-27-501.*

PERSONAL SAFETY ORDERS

Who can apply?	An individual can apply for a personal safety order for themselves or on behalf of a minor child or incapacitated adult if they are ineligible for a domestic violence order and allege a person committed any of the following acts against them: • A **sexual offense** or attempted sexual offense; • **Stalking** or harassment; or • Repeated credible threats of bodily injury when the person making the threats knows or has reason to know that the threats cause another person to reasonably fear for his or her safety. *WV ST §§ 53-8-1, 53-8-3, 53-8-4.* A **Sexual offense** means any of the crimes listed in WV ST § 53-8-1. These crimes include but are not limited to: • Sexual assault in the first through third degrees; • Sexual abuse in the first through third degrees; • Indecent exposure; • Incest; • Female genital mutilation; • A variety of offenses involving the display or distribution of obscene content to minors; • A variety of offenses involving the display, production, or distribution of content depicting minors engaged in sexually explicit conduct. WV ST § 53-8-1 (A-P) **Stalking** is defined as: A course of conduct directed at another with the intent to cause that person to fear for their personal safety, the safety of others, or suffer emotional distress. *WV ST § 61-2-9a(a).*

PERSONAL SAFETY ORDERS

Can minors apply?	No, the petition must be filed by a "parent, guardian, or custodian." *WV ST § 53-8-3.*
Who can be restrained?	Anyone regardless of age or relationship to the petitioner, except that if the respondent is a family or household member of the petitioner, the petitioner should seek a domestic violence protective order instead of a personal safety order. *WV ST § 53-8-3.*

What types of relief may a court order?	A personal safety order (whether temporary or final) may order the respondent:
	• To refrain from committing or threatening to commit a sexual offense, stalking behavior, or repeated credible threats of bodily injury;
	• To refrain from contacting, attempting to contact, or harassing the petitioner;
	• To refrain from entering petitioner's residence, workplace, or school;
	• Not to visit, assault, molest, or otherwise interfere with the petitioner and, if the petitioner is a child, the petitioner's siblings and minors residing in the household of the petitioner; or
	• Not to possess a firearm if:
	  ◦ A weapon was used or threatened to be used in the commission of the offense predicating the petition for the personal safety order;
	  ◦ The respondent has violated any prior personal safety order; or
	  ◦ The respondent has been convicted of an offense involving the use of a firearm.
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PERSONAL SAFETY ORDERS

What types of relief may a court order?	A personal safety order may also order an unsuccessful party to pay filing fees and costs of a personal safety order proceeding. (see WV ST § 53-8-13). A personal safety order can only contain the relief necessary to protect the petitioner. *WV ST § 53-8-5 and WV ST § 53-8-7(d)(1).*
How long does the order last?	The temporary personal safety order shall be effective for not more than 10 days after service of the order on the respondent, but the magistrate may extend the temporary personal safety order to effectuate service of the order or for other good cause. *WV ST § 53-8-5.* All relief granted in a final personal safety order shall be effective for the period stated in the order, not to exceed 2 years. *WV ST § 53-8-7(f).*
Can the order be renewed?	No. The personal safety order may be extended only if the initial term was for less than the 2-year maximum. The total length cannot exceed 2 years. *WV ST § 53-8-8.*
Is a hearing with the respondent required?	A court may enter a temporary personal safety order without the respondent present. *WV ST § 53-8-5.* The magistrate may grant a final personal safety order only after the respondent has been served with notice and has had an opportunity to participate in a court hearing. The hearing must occur within 10 days of the issuance of the temporary order, absent good cause. *WV ST § 53-8-6(a-b).*

HOW TO APPLY

Forms are available at courthouses and online at: https://www.courtswv.gov/public-resources/court-forms.

Forms should be filed in the county where petitioner lives, county where the respondent lives, or county where the abuse occurred.

There are no fees for filing for domestic violence protective orders. Personal safety orders may have filing fees assessed if the order is denied.

SCAN ME!

For specific questions about how to use this guide, or if you have any other questions, VRLC is here to help!

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