

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 444**

(By Senators Kessler (Acting President),  
Plymale, Klempa and Beach)

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[Originating in the Committee on the Judiciary;  
reported February 24, 2011.]

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A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §62-10A-1, §62-10A-2, §62-10A-3, §62-10A-4, §62-10A-5, §62-10A-6, §62-10A-7, §62-10A-8, §62-10A-9, §62-10A-10, §62-10A-11, §62-10A-12, §62-10A-13, §62-10A-14, §62-10A-15, §62-10A-16, §62-10A-17, §62-10A-18, §62-10A-19, §62-10A-20, §62-10A-21, §62-10A-22, §62-10A-23, §62-10A-24, §62-10A-25, §62-10A-26, §62-10A-27 and §62-10-28, all relating to the protection of nonfamily or nonhousehold members; setting forth the purpose of the article; defining terms; establishing jurisdiction of magistrate and circuit courts; establishing venue for actions;

establishing procedures for filing petitions, hearings, entry of orders and contents of orders; declaring orders effective statewide; establishing means of service of process; making proceedings confidential; making rules of evidence applicable to proceedings; establishing time periods for orders; prohibiting mutual orders; establishing procedures for appeals and pursuing of records; requiring orders be filed in domestic violence database; limiting use of information obtained during proceedings; allowing for civil contempt for violations of orders; creating offenses for violations of protection orders; directing Supreme Court of Appeals to create forms; granting immunity to persons seeking orders; orders in good faith; and establishing penalties.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §62-10A-1, §62-10A-2, §62-10A-3, §62-10A-4, §62-10A-5, §62-10A-6, §62-10A-7, §62-10A-8, §62-10A-9, §62-10A-10, §62-10A-11, §62-10A-12, §62-10A-13, §62-10A-14, §62-10A-15, §62-10A-16, §62-10A-17, §62-10A-18, §62-10A-19, §62-10A-20, §62-10A-21, §62-10A-22, §62-10A-23, §62-10A-24, §62-10A-25, §62-10A-26, §62-10A-27 and §62-10-28, all to read as follows:

**CHAPTER 62. CRIMINAL PROCEDURE.**

**ARTICLE 10A. PERSONAL SAFETY PROTECTION ORDERS.**

**§62-10A-1. Purpose.**

1 The Legislature finds that:

2 (1) It is the intent of the Legislature that the protection  
3 order created by this chapter be a remedy for people who do  
4 not qualify for a domestic violence order of protection.

5 (2) The Legislature of this state hereby finds that the  
6 issuance and enforcement of protection orders to persons  
7 against whom crimes of violence have been committed or  
8 threatened by nonfamily or nonhousehold members are  
9 necessary in the State of West Virginia because such protec-  
10 tion orders can promote safety, reduce violence and prevent  
11 serious harm and death.

**§62-10a-2. Definitions**

1 (a) “Crime of violence against the person” means offenses  
2 set forth in articles two, eight-b or eight-d of chapter sixty-  
3 one of this code.

4 (b) “Emergency hearing” under this article means the  
5 hearing before a magistrate upon the filing of a petition for  
6 a personal safety civil protection order. An emergency  
7 hearing may be held ex parte.

8 (c) “Final hearing” under this article means the hearing  
9 before a circuit court judge following the entry of a personal  
10 safety civil protection order by a magistrate as a result of the  
11 emergency hearing.

12 (d) “Incapacitated adult” means any person who by reason  
13 of physical, mental or other infirmity is unable to physically  
14 carry on the daily activities of life necessary to sustaining  
15 life and reasonable health.

16 (e) “Law-enforcement agency” means any duly authorized  
17 state, county or municipal organization employing one or  
18 more persons whose responsibility is the enforcement of laws  
19 of the state or any county or municipality thereof: *Provided*,  
20 That the Hatfield-McCoy Regional Recreation Authority, the  
21 Public Service Commission or any state institution of higher  
22 education is not a law-enforcement agency.

23 (f) “Law enforcement officer” means any duly authorized  
24 member of a law-enforcement agency who is authorized to  
25 maintain public peace and order, prevent and detect crime,  
26 make arrests and enforce the laws of the state or any county  
27 or municipality thereof, other than parking ordinances.

28 (g) “Personal safety protection order” under this article is  
29 an emergency civil protection order entered by a magistrate

30 as a result of the emergency hearing or personal safety civil  
31 protection order entered by a circuit court upon final hearing  
32 that affords protection to persons who do not meet the  
33 definition of family or household member under section two  
34 hundred four, article twenty-seven, chapter forty-eight of  
35 this code.

**§62-10A-3. Jurisdiction and venue.**

1 (a) Magistrate courts and circuit courts have jurisdiction  
2 over actions conducted pursuant to this article.

3 (b) The petition may be filed in the county in which any  
4 crime of violence against the person occurred, in the county  
5 in which the respondent is living or in the county in which  
6 the petitioner is living, either temporarily or permanently.

**§62-10A-4. Commencement of proceeding.**

1 (a) An action under this article is commenced by the filing  
2 of a verified petition in the magistrate court.

3 (b) No person shall be refused the right to file a petition  
4 under the provisions of this article. No person shall be  
5 denied relief under the provisions of this article if she or he  
6 presents facts sufficient under the provisions of this article  
7 for the relief sought.

8 (c) It shall not be a consideration in the proceedings that:

9 (1) The respondent was voluntarily intoxicated;

10 (2) The petitioner acted in self-defense or defense of  
11 another; or

12 (3) The petitioner did not act in self-defense or defense of  
13 another.

14 (d) A petitioner is eligible for an order of protection  
15 whether or not:

16 (1) The petitioner reports the abuse to law enforcement;

17 (2) Charges are filed; or

18 (3) The petitioner participates in a criminal prosecution.

19 (e) Nothing in this section prevents lawful assembly and  
20 petition for the lawful redress of grievances, including, but  
21 not limited to:

22 (1) Any labor or employment relations issue;

23 (2) Demonstration at the seat of federal, state, county or  
24 municipal government; and

25 (3) Activities protected by the West Virginia Constitution  
26 or the United States Constitution or any statute of this state  
27 or the United States.

28 (f) Withdrawal or dismissal of a petition for a personal  
29 safety protection order prior to adjudication operates as a  
30 dismissal without prejudice. No action for a personal safety

31 protection order may be dismissed because the respondent is  
32 being prosecuted for a crime against the petitioner. For any  
33 action commenced under this article, dismissal of a case or  
34 a finding of not guilty, does not require dismissal of the  
35 action for a civil protection order.

**§62-10A-5. Persons who may file petition; persons accompanying  
petitioner.**

1 (a) A petition for a personal safety protection order may be  
2 filed by:

3 (1) A person seeking relief under this article for herself or  
4 himself;

5 (2) A parent or guardian on behalf of a minor child or an  
6 incapacitated adult; or

7 (3) A person who reported or was a witness to the crime of  
8 violence against the person and who, as a result, has been  
9 abused, threatened, harassed or who has been the subject of  
10 other actions intended to intimidate the person.

11 (b) No person accompanying a person who is seeking to file  
12 a petition under the provisions of this article is precluded  
13 from being present if his or her presence is desired by the  
14 person seeking a petition unless the person's behavior is  
15 disruptive to the proceeding.

**§62-10A-6. Charging of fees prohibited.**

1 Regardless of whether a personal safety protection order is  
2 issued, no filing fees, court costs, bond or other costs for  
3 services shall be assessed to the petitioner in an action  
4 commenced pursuant, provided by or associated with any  
5 proceedings under this article.

**§62-10A-7. Statewide applicability.**

1 Any personal safety protection order issued pursuant to  
2 this article is effective throughout the state in every county.  
3 Any other comparable protection order issued by any other  
4 state of the United States, the District of Columbia, Puerto  
5 Rico, the United States Virgin Islands or a territory or  
6 insular possession subject to the jurisdiction of the United  
7 States or an Indian tribe or band that has jurisdiction to  
8 issue protection orders shall be accorded full faith and  
9 credit.

**§62-10A-8. Service of process.**

1 (a) A personal safety protection order may be served on the  
2 respondent by means of a Class I legal advertisement  
3 published notice, with the publication area being the county  
4 in which the respondent resides, published in accordance

5 with the provisions of section two, article three, chapter  
6 fifty-nine of this code if:

7 (1) The petitioner files proof with the court showing that  
8 two attempts at personal service pursuant to Rule 4 of the  
9 West Virginia Rules of Civil Procedure has been unsuccessful  
10 or evidence is adduced at the hearing for the personal safety  
11 protection order that the respondent has left the State of  
12 West Virginia; and

13 (2) A copy of the order is mailed by certified or registered  
14 mail to the respondent at the respondent's last known  
15 residence and returned undelivered.

16 (b) Any personal safety protection order issued by the court  
17 of this state which is served in compliance with the provi-  
18 sions of Rule 4(f) of the West Virginia Rules of Civil Proce-  
19 dure served outside the boundaries of this state shall carry  
20 the same force and effect as if it had been personally served  
21 within this state's boundaries.

**§62-10A-9. Confidentiality; identifying information; proceedings  
closed to public.**

1 (a) Proceedings pursuant to this article are not open to the  
2 public and documents filed and other court records shall be  
3 confidential absent on order of the circuit court.

4 (b) If a party alleges in an affidavit or a pleading under  
5 oath that the safety of a party or child would be jeopardized  
6 by disclosure of identifying information, the identifying  
7 information must be sealed by the clerk and not disclosed to  
8 the other party or to the public unless the court orders the  
9 disclosure to be made after a hearing in which the court  
10 takes into consideration the safety of the party or child and  
11 determines that the disclosure is in the interest of justice.

12 (c) All orders are public records.

**§62-10A-10. Evidence presented in hearing.**

1 (a) The rules of evidence are applicable to proceedings  
2 under this article including the provisions of Rule 404A(a)(2)  
3 and (3).

4 (b) Copies of medical reports or records may be admitted  
5 into evidence to the same extent as though the original  
6 thereof. The custodian of such records shall not be required  
7 to be present to authenticate such records for any proceeding  
8 held pursuant to this subsection.

**§62-10A-11. Personal safety protection orders; hearings; persons  
present.**

1 (a) Upon the filing of a verified petition under this article,  
2 the magistrate court may enter an emergency personal safety

3 protection order as it may deem necessary to protect the  
4 petitioner and, upon good cause shown, may do so ex parte  
5 without the necessity of bond being given by the petitioner.  
6 Clear and convincing evidence of immediate and present  
7 danger of bodily injury to the petitioner constitutes good  
8 cause for the issuance of an emergency personal safety  
9 protection order pursuant to this section. If the respondent  
10 is not present at the proceeding, the petitioner or the peti-  
11 tioner's legal representative shall certify to the court, in  
12 writing, the efforts which have been made to give notice to  
13 the respondent or just cause why notice should not be  
14 required.

15 (b) Following the proceeding, the magistrate court shall  
16 order a copy of the petition to be served immediately upon  
17 the respondent, together with a copy of any emergency  
18 personal safety protection order entered pursuant to the  
19 proceedings, a notice of the final hearing before the circuit  
20 court and a statement of the right of the respondent to  
21 appear and participate in the final hearing, as provided in  
22 subsection (d) of this section. Copies of any order entered  
23 under the provisions of this section, a notice of the final  
24 hearing before the circuit court and a statement of the right

25 of the petitioner to appear and participate in the final  
26 hearing, as provided in subsection (d) of this section, shall  
27 also be delivered to the petitioner. Copies of any order  
28 entered shall also be delivered to any law-enforcement  
29 agency having jurisdiction to enforce the order, including,  
30 but not limited to, municipal police, the county sheriff's  
31 office and local office of the State Police, within twenty-four  
32 hours of the entry of the order. An emergency personal safety  
33 protection order is effective until modified by order of the  
34 circuit court upon hearing as provided in subsection (d) of  
35 this section.

36 (c) Subsequent to the entry of the emergency personal  
37 safety protection order, service on the respondent and the  
38 delivery to the petitioner and law-enforcement officers, the  
39 court file shall be transferred to the office of the clerk of the  
40 circuit court for use by the circuit court.

41 (d) The circuit court shall schedule a final hearing on each  
42 petition in which an emergency personal safety protection  
43 order has been entered by a magistrate. The hearing shall be  
44 scheduled not later than thirty days following the entry of  
45 the order by the magistrate. The notice of the final hearing  
46 shall be served on the respondent and delivered to the

47 petitioner, as provided in subsection (b) of this section and  
48 must set forth the hearing date, time and place and include  
49 a statement of the right of the parties to appear and partici-  
50 pate in the final hearing. The notice must also provide that  
51 the petitioner's failure to appear may result in a dismissal of  
52 the petition and that the respondent's failure to appear may  
53 result in the entry of a final personal safety protection order  
54 against him or her for a period of eighteen months. The  
55 notice must also include the name, mailing address, physical  
56 location and telephone number of the circuit court having  
57 jurisdiction over the proceedings. To facilitate the prepara-  
58 tion of the notice of final hearing required by the provisions  
59 of this subsection, the circuit court must provide the magis-  
60 trate court with a day and time in which final hearings or  
61 status conferences may be scheduled before the circuit court  
62 within the time required by law.

63 (e) Upon final hearing, the petitioner must prove, by a  
64 preponderance of the evidence, the allegation of a crime of  
65 violence against the person or the making of credible threats  
66 to do so and that such conduct is likely to reoccur or that  
67 respondent persists in contacting or attempting to contact  
68 petitioner or that he or she reported or witnessed a crime of

69 violence against the person the making of credible threats  
70 against another to do so and has, as a result, been abused,  
71 threatened, harassed or has been the subject of other actions  
72 to attempt to intimidate him or her, or such petition shall be  
73 dismissed by the circuit court. If the respondent has not been  
74 served with notice of the emergency personal safety protec-  
75 tion order, the hearing may be continued to permit service to  
76 be effected. The failure to obtain service upon the respondent  
77 does not constitute a basis for dismissal of the petition.

78 (f) No person requested by a party to be present during a  
79 hearing held under the provisions of this article shall be  
80 precluded from being present unless such person is to be a  
81 witness in the proceeding and a motion for sequestration has  
82 been made and such motion has been granted.

83 (g) Upon hearing, the circuit court may dismiss the petition  
84 or enter a personal safety protection order for a period of  
85 eighteen months. The hearing may be continued on motion  
86 of the respondent in the discretion of the court. Otherwise,  
87 the hearing may be continued by the court no more than  
88 seven days. If a hearing is continued, the circuit court may  
89 modify the emergency personal safety protection order as it  
90 deems necessary.

**§62-10A-12. Issuance of personal safety protection order; modification of final order.**

1 (a) Upon final hearing, the court shall enter a personal  
2 safety protection order if it finds, after hearing the evidence,  
3 that the petitioner has proven the allegations in the petition.  
4 If the respondent is present at the hearing and elects not to  
5 contest the allegations or does not contest the relief sought,  
6 the petitioner is not required to produce evidence and prove  
7 the allegations and the court may directly address the issues  
8 of the relief requested.

9 (b) The court may modify the terms of a personal safety  
10 protection order at any time upon subsequent motion filed by  
11 any party.

**§62-10A-13. Mandatory provisions in personal safety protection orders.**

1 A personal safety protection order shall order the respon-  
2 dent to refrain from any direct or indirect contact with the  
3 petitioner or engaging in other conduct that would place the  
4 petitioner in reasonable fear of bodily injury.

**§62-10A-14. Permissive provisions in personal safety protection order.**

1 The terms of a personal safety protection order may:

2 (1) Order the respondent to refrain from contacting  
3 attempting to contact, the petitioner by any means including  
4 through third parties regardless of whether those third  
5 parties know of the order.

6 (2) Order the respondent to refrain from entering or  
7 remaining present in the immediate environs of the peti-  
8 tioner's residence, school, place of employment or other  
9 specified places at times when the petitioner is present.

10 (3) The court, in its discretion, may prohibit a respondent  
11 from possessing a firearm as defined in section seven, article  
12 seven, chapter sixty-one of this code if:

13 (A) A weapon was used or threatened to be used in the  
14 commission of the offense predicated the petitioning for the  
15 personal safety protection order; or

16 (B) The respondent has violated any prior order entered  
17 under this article.

18 (4) Order other relief deemed necessary and appropriate by  
19 the court.

**§62-10A-15. Provisions in personal safety protection order for  
person witnessing a crime of violence against the  
person.**

1 When the person to be protected is a person who reported  
2 or was a witness to the crime of violence against the person,  
3 the terms of the order may direct:

4 (1) The respondent to refrain from abusing, contacting,  
5 telephoning, communicating, harassing, verbally abusing or  
6 otherwise intimidating the person to be protected;

7 (2) The respondent to refrain from entering the school,  
8 business or place of employment of the person to be pro-  
9 tected for the purpose of violating the personal safety  
10 protection order; and

11 (3) The respondent to refrain from entering or being  
12 present in the immediate environs of the residence of the  
13 petitioner.

**§62-10A-16. Time period a protective order is in effect; extension  
of order; notice of order or extension.**

1 (a) A personal safety protection order, entered by the  
2 circuit court pursuant to this article, is effective for eighteen  
3 months. Upon receipt of a written request for renewal from  
4 the petitioner prior to the expiration of the original order,  
5 the circuit court shall extend its order for another six  
6 months.

7 (b) The court may extend a protective order entered  
8 pursuant to subsection (a) of this section for whatever period  
9 the court considers necessary to protect the physical safety  
10 of the petitioner or those persons for whom a petition may be  
11 filed as provided in section five of this article, if the court  
12 finds by a preponderance of evidence, after a hearing of  
13 which respondent has been given notice, that:

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

16 (2) The totality of the circumstances presented to the court  
17 require the extension to protect the physical safety of the  
18 petitioner or those persons for whom a petition may be filed  
19 in section five of this article.

20 (c) To be effective, a written request for extension must be  
21 submitted to the court prior to the expiration of the original  
22 order period. A notice of the extension shall be sent by the  
23 clerk of the court to the respondent by first-class mail,  
24 addressed to the last known address of the respondent as  
25 indicated by the court file. The extension of time is effective  
26 upon mailing of the notice.

27 (d) Certified copies of any order entered or extension notice  
28 made under the provisions of this section shall be served

29 upon the respondent by first class mail, addressed to the last  
30 known address of the respondent as indicated by the court  
31 file, and delivered to the petitioner and any law-enforcement  
32 agency having jurisdiction to enforce the order, including the  
33 city police, the county sheriff's office or local office of the  
34 West Virginia State Police, within twenty-four hours of the  
35 entry of the order.

36 (e) The circuit court may modify the terms of personal  
37 safety protection order upon motion of either party.

38 (f) The clerk of the circuit court shall cause a copy of any  
39 personal safety protection order entered by the circuit court  
40 pursuant to the provisions of this article to be forwarded to  
41 the magistrate or magistrate court clerk and the magistrate  
42 or magistrate court clerk shall forward a copy of the protec-  
43 tive order to the appropriate state agencies for registration.

**§62-10A-17. Mutual personal safety protection orders prohibited.**

1 Mutual personal safety protection orders are prohibited  
2 unless both parties have filed a petition under this article  
3 and have proven the allegations contained therein by a  
4 preponderance of the evidence. This does not prevent other  
5 persons, including the respondent, from filing a separate  
6 petition. The court may consolidate two or more petitions if

7 he or she determines that consolidation will further the  
8 interest of justice and judicial economy. The court shall enter  
9 a separate order for each petition filed.

**§62-10A-18. Appeals.**

1 (a) A petitioner who has been denied an emergency  
2 personal safety protection order, may file a petition for  
3 appeal of the denial, within five days of the denial, to the  
4 circuit court.

5 (b) Appeals from adverse decisions of the circuit court must  
6 be filed within ten days of the entry of the final order.

7 (c) The standard of review of the action below by the  
8 circuit court is de novo.

**§62-10A-19. Purging of protection order files.**

1 Six months after the expiration of a final personal safety  
2 protection order, the circuit court may, upon motion, order  
3 that personal safety protection order and all references to the  
4 order be purged from the files maintained by any law-  
5 enforcement agency and may further order that the file  
6 maintained by the court be sealed and not opened except  
7 upon order of the court when such is in the interest of  
8 justice.

**§62-10A-20. Filing of orders with law-enforcement agency.**

1 (a) Upon entry of any order pursuant to this article and  
2 granting relief provided for by this article, a copy of the  
3 order shall, no later than the close of the next business day,  
4 be transmitted by the court or the clerk of the court to a local  
5 office of the municipal police, the county sheriff, the West  
6 Virginia State Police and any other appropriate law-enforce-  
7 ment agency where it shall be placed in a confidential file  
8 with access provided only to law-enforcement, the petitioner  
9 and the respondent named on the order.

10 (b) Orders shall be promptly served upon the respondent.  
11 Failure to serve a personal safety protection order on the  
12 respondent does not stay the effect of a valid order if the  
13 respondent has actual notice of the existence and contents of  
14 the order.

**§62-10A-21. Service of pleadings and orders by law-enforcement  
officers.**

1 Notwithstanding any other provision of this code to the  
2 contrary, all law-enforcement officers are hereby authorized  
3 to serve all pleadings and orders filed or entered pursuant to  
4 this article on Sundays and legal holidays. No  
5 law-enforcement officer may refuse to serve any pleadings or  
6 orders entered pursuant to this article.

**§62-10A-22. Registry of protection orders.**

1 (a) A court which enters a personal safety protection order  
2 pursuant to this article shall immediately register such order  
3 in the domestic violence database established pursuant to the  
4 provisions of section twenty-one, article one, chapter fifty-  
5 one of this code. A protected individual who obtains a  
6 protection order from a jurisdiction outside of this state  
7 pursuant to its law, or his or her representative as provided  
8 in section five, article twenty-eight of this chapter, may  
9 register that order with the West Virginia Supreme Court of  
10 Appeals for entry in the domestic violence database estab-  
11 lished pursuant to the provisions of section twenty-one,  
12 article one, chapter fifty-one of this code.

13 (b) Failure to register an order as provided in this section  
14 does not affect its enforceability in any county or jurisdic-  
15 tion.

**§62-10A-23. Limitation on use of information.**

1 Nothing in this article authorizes the inclusion of informa-  
2 tion contained in a report of an incident of abuse in any  
3 local, state, interstate, national or international systems of  
4 criminal identification pursuant to section twenty-four,  
5 article two, chapter fifteen of this code. Nothing in this

6 section prohibits the West Virginia State Police from  
7 processing information through its criminal identification  
8 bureau with respect to any actual charge or conviction of a  
9 crime.

**§62-10A-24. Civil contempt; violation of personal safety protec-  
tion orders; order to show cause.**

1 (a) Any party to a personal safety protection order or a  
2 legal guardian or guardian ad litem may file a petition for  
3 civil contempt alleging a violation of an order issued pursu-  
4 ant to the provisions of this article. The petition shall be filed  
5 in the magistrate court, if a magistrate court entered an  
6 order, or in the circuit court, if a circuit court entered the  
7 order, in the county in which the violation occurred or the  
8 county in which the order was issued.

9 (b) When a petition for an order to show cause is filed, a  
10 hearing on the petition shall be held within ten days from the  
11 filing of the petition. Any order to show cause which is  
12 issued shall be served upon the alleged violator.

13 (c) Upon a finding of contempt, the court may order the  
14 violator to comply with specific provisions of the personal  
15 safety protection order and post a bond as surety for faithful  
16 compliance with such order. The bond may not be a personal

17 recognizance bond, shall be in an amount that does not  
18 exceed the ability of the violator to post and may not be  
19 waived by a fee waiver pursuant to section one, article two,  
20 chapter fifty-nine of this code.

**§62-10A-25. Offenses for violation of personal safety protection  
order, repeat offenses, penalties.**

1 (a) A respondent who knowingly and willfully violates the  
2 terms of: (1) An emergency or final personal safety protection  
3 order issued under the provisions of this article granting  
4 relief pursuant to the provisions of this article; or (2) a  
5 condition of bail, probation or parole which has the express  
6 intent or effect of protecting the personal safety of a particu-  
7 lar person or persons is guilty of a misdemeanor and, upon  
8 conviction thereof, shall be confined in jail for a period of  
9 not less than one day nor more than one year, which jail term  
10 shall include actual confinement of not less than twenty-four  
11 hours, and shall be fined not less than \$250 nor more than  
12 \$2000.

13 (b) A respondent who is convicted of a third or subsequent  
14 offense under subsection (a) of this section is guilty of a  
15 felony and, upon conviction thereof, shall, in the discretion  
16 of the court, be confined in a correctional facility not less

17 than one nor more than five years, or be confined in jail not  
18 exceeding twelve months and fined not exceeding \$500.

**§62-10A-26. Arrest for violations of personal safety protection orders.**

1 When a civil law-enforcement officer observes any respon-  
2 dent abuse the petitioner or the respondent's physical  
3 presence at any location in knowing and willful violation of  
4 the terms of an emergency or final personal safety civil  
5 protection order issued under the provisions of this article,  
6 he or she shall immediately arrest the respondent if:

7 (1) The law-enforcement officer has observed credible  
8 corroborative evidence that the offense has occurred; and

9 (2) The law-enforcement officer has received, from the  
10 victim or a witness, a verbal or written allegation of the facts  
11 constituting a violation of section nine hundred three of this  
12 article; or

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

**§62-10A-27. Forms to be provided.**

1 The West Virginia Supreme Court of Appeals shall pre-  
2 scribe forms which are necessary and convenient for pro-  
3 ceedings pursuant to this article and the court shall distrib-

4 ute such forms to the clerk of the circuit court, the secretary-  
5 clerk of the circuit court and the clerk of the magistrate  
6 court of each county within the state.

**§62-10A-28. Immunity from liability for filing a report or com-  
plaint or participating in a judicial proceeding  
concerning alleged harassment or stalking;  
rebuttable presumption of good faith.**

1 A person who seeks relief pursuant to the article who is  
2 acting in good faith is immune from criminal and civil  
3 liability for those actions.

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(NOTE: Strike throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.)