

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 191**

4 (By Senators Kessler (Mr. President), Stollings, Unger, Laird and  
5 Jenkins)

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7 \_\_\_\_\_  
8 [Originating in the Committee on the Judiciary;  
9 reported February 2, 2012.]  
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12 A BILL to amend the Code of West Virginia, 1931, as amended, by  
13 adding thereto a new article, designated §53-8-1, §53-8-2,  
14 §53-8-3, §53-8-4, §53-8-5, §53-8-6, §53-8-7, §53-8-8, §53-8-9,  
15 §53-8-10, §53-8-11, §53-8-12, §53-8-13, §53-8-14, §53-8-15,  
16 §53-8-16, §53-8-17 and §53-8-18, all relating to personal  
17 safety orders; confidentiality of proceedings; who may file a  
18 petition; contents of petition; temporary hearing and relief  
19 available; contents of temporary order; respondent's  
20 opportunity to be heard; notice to respondent; final hearing  
21 and forms of relief; modification and rescission; appeals;  
22 criminal penalties; priority of petitions; fees and costs;  
23 service by law enforcement; rules and forms; limitation on use  
24 of information; immunity from liability; and the sealing of

1 records.

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

3 That the Code of West Virginia, 1931, as amended, be amended  
4 by adding thereto a new article, designated §53-8-1, §53-8-2, §53-  
5 8-3, §53-8-4, §53-8-5, §53-8-6, §53-8-7, §53-8-8, §53-8-9, §53-8-  
6 10, §53-8-11, §53-8-12, §53-8-13, §53-8-14, §53-8-15, §53-8-16,  
7 §53-8-17 and §53-8-18, all to read as follows:

8 **ARTICLE 8. PERSONAL SAFETY ORDERS.**

9 **§53-8-1. Definitions.**

10 In this article the following words have the meanings  
11 indicated.

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

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

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

24 (4) *Petitioner.* -- "Petitioner" means an individual who files

1 a petition under section four of this article.

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

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

8 (7) *Respondent*. -- "Respondent" means an individual alleged in  
9 a petition to have committed an act specified in subsection (a),  
10 section four of this article against a petitioner.

11 (8) *School*. -- "School" means an educational facility  
12 comprised of one or more buildings, including school grounds, a  
13 school bus or any school-sponsored function or extracurricular  
14 activities. For the purpose of this subdivision, "school grounds"  
15 includes the land on which a school is built together with such  
16 other land used by students for play, recreation or athletic events  
17 while attending school. "Extracurricular activities" means  
18 voluntary activities sponsored by a school, a county board or an  
19 organization sanctioned by a county board or the State Board of  
20 Education and include, but are not limited to, preparation for and  
21 involvement in public performances, contests, athletic  
22 competitions, demonstrations, displays, organizations and clubs.

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

- 1 (A) Section nine, article eight, chapter sixty-one of this  
2 code;
- 3 (B) Section twelve, article eight, chapter sixty-one of this  
4 code;
- 5 (C) Section two, article eight-a, chapter sixty-one of this  
6 code;
- 7 (D) Section four, article eight-a, chapter sixty-one of this  
8 code;
- 9 (E) Section five, article eight-a, chapter sixty-one of this  
10 code;
- 11 (F) Section three, article eight-b, chapter sixty-one of this  
12 code;
- 13 (G) Section four, article eight-b, chapter sixty-one of this  
14 code;
- 15 (H) Section five, article eight-b, chapter sixty-one of this  
16 code;
- 17 (I) Section seven, article eight-b, chapter sixty-one of this  
18 code;
- 19 (J) Section eight, article eight-b, chapter sixty-one of this  
20 code;
- 21 (K) Section nine, article eight-b, chapter sixty-one of this  
22 code;
- 23 (L) Section two, article eight-c, chapter sixty-one of this  
24 code;

1 (M) Section three, article eight-c, chapter sixty-one of this  
2 code;

3 (N) Section three-a, article eight-d, chapter sixty-one of  
4 this code;

5 (O) Section five, article eight-d, chapter sixty-one of this  
6 code; and

7 (P) Section six, article eight-d, chapter sixty-one of this  
8 code.

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

12 **§53-8-2. Confidentially of proceedings.**

13 (a) *General Provisions.* -- All orders, findings, pleadings,  
14 recordings, exhibits, transcripts or other documents contained in  
15 a court file are confidential and are not available for public  
16 inspection: *Provided,* That unless the file is sealed pursuant to  
17 section eighteen of this article or access is otherwise prohibited  
18 by order, any document in the file shall be available for  
19 inspection and copying by the parties, attorneys of record,  
20 guardians ad litem, designees authorized by a party in writing and  
21 law enforcement. A magistrate or circuit judge may open and inspect  
22 the entire contents of the court file in any case pending before  
23 the magistrate's or judge's court. When sensitive information has  
24 been disclosed in a hearing, pleading or document filing, the court

1 may order such information sealed in the court file. Sealed court  
2 files shall be opened only pursuant to section eighteen of this  
3 article.

4 (b) (1) *Proceedings are not open to the public.* -- Hearings  
5 conducted pursuant to this article are closed to the general public  
6 except that persons whom the court determines have a legitimate  
7 interest in the proceedings may attend.

8 (2) A person accompanying the petitioner may not be excluded  
9 from being present if his or her presence is desired by the person  
10 seeking a petition unless the person's behavior is disruptive to  
11 the proceeding.

12 (c) *Orders permitting examination or copying of file contents.*  
13 -- Upon written motion, for good cause shown, the court may enter  
14 an order permitting a person who is not permitted access to a court  
15 file under subsection (a) to examine and/or copy documents in a  
16 file. Such orders shall set forth specific findings which  
17 demonstrate why the interests of justice necessitate the  
18 examination, copying, or both, and shall specify the particular  
19 documents to be examined and/or copied and the arrangements under  
20 which such examination, copying, or both, may take place.

21 (d) *Obtaining confidential records.* -- Unless both the  
22 petitioner and the respondent waive confidentiality in writing,  
23 records contained in the court file may not be obtained by subpoena  
24 but only by court order and upon full compliance with statutory and

1 case law requirements.

2 **§53-8-3. Who may file; exclusivity; applicability of article.**

3 (a) *Who may file a petition.* -- A petition for relief under  
4 this article may be filed by:

5 (1) A person seeking relief under this article for herself or  
6 himself; or

7 (2) A parent, guardian or custodian on the behalf of a minor  
8 child or an incapacitated adult.

9 (b) *Other remedies generally not precluded.* -- By proceeding  
10 under this article, a petitioner is not limited to or precluded  
11 from pursuing any other legal remedy.

12 (c) *Circumstances where article is inapplicable.* -- This  
13 article does not apply to a petitioner who is a person eligible for  
14 relief under article twenty-seven, chapter forty-eight of this  
15 code.

16 (d) *Right to file.* -- No person may be refused the right to  
17 file a petition under the provisions of this article. No person may  
18 be denied relief under the provisions of this article if she or he  
19 presents facts sufficient under the provisions of this article for  
20 the relief sought.

21 **§53-8-4. Petition seeking relief.**

22 (a) *Underlying acts.* -- A petitioner may seek relief under  
23 this article by filing with a magistrate court a petition that  
24 alleges the commission of any of the following acts against the

1 petitioner by the respondent:

2 (1) A willful act that causes serious bodily injury; or  
3 a willful act that places the petitioner in reasonable apprehension  
4 of imminent serious bodily injury as serious bodily injury is  
5 defined in section one, article eight-b, chapter sixty-one of this  
6 code;

7 (2) A sexual offense or attempted sexual offense as defined in  
8 section one of this article;

9 (3) Kidnaping in violation of section fourteen-a, article two,  
10 chapter sixty-one of this code of this code;

11 (4) Unlawful restraint in violation of section fourteen-g,  
12 article two, chapter sixty-one of this code;

13 (5) A violation of section nine-a, article two, chapter sixty-  
14 one of this code; or

15 (6) Felony destruction of property as defined by the  
16 provisions of section thirty, article three, chapter sixty-one of  
17 this code.

18 (b) *Contents.* --

19 The petition shall:

20 (A) Be verified and provide notice to the petitioner that an  
21 individual who knowingly provides false information in the petition  
22 is guilty of a misdemeanor and on conviction is subject to the  
23 penalties specified in subsection (e) of this section;

24 (B) Subject to the provisions of subsection (c) of this



1 section, contain the address of the petitioner; and

2 (C) Include all information known to the petitioner of:

3 (I) The nature and extent of the act specified in subsection  
4 (a) of this section for which the relief is being sought, including  
5 information known to the petitioner concerning previous harm or  
6 injury resulting from an act specified in subsection (a) of this  
7 section by the respondent;

8 (ii) Each previous and pending action between the parties in  
9 any court; and

10 (iii) The whereabouts of the respondent.

11 (c) *Address may be stricken.* -- If, in a proceeding under this  
12 article, a petitioner alleges, and the court finds, that the  
13 disclosure of the address of the petitioner would risk further harm  
14 to the petitioner or a member of the petitioner's household, that  
15 address may be stricken from the petition and omitted from all  
16 other documents filed with, or transferred to, a court.

17 (d) *Providing false information.* -- An individual who  
18 knowingly provides false information in a petition filed under this  
19 section is guilty of a misdemeanor and, upon conviction thereof,  
20 shall be fined not less than \$50 nor more than \$1,000 or confined  
21 in jail not more than ninety days, or both.

22 (e) *Withdrawal or dismissal of a petition prior to*  
23 *adjudication operates as a dismissal without prejudice.* -- No  
24 action for a personal safety order may be dismissed because the

1 respondent is being prosecuted for a crime against the petitioner.  
2 For any action commenced under this article, dismissal of a case or  
3 a finding of not guilty, does not require dismissal of the action  
4 for a civil protection order.

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

6 (a) *Authorized; forms of relief available.* --

7 (1) If after a hearing on a petition, whether ex parte or  
8 otherwise, a magistrate finds that there is reasonable cause to  
9 believe that the respondent has committed an act specified in  
10 subsection (a), section four of this article, against the  
11 petitioner, the magistrate shall issue a temporary personal safety  
12 order to protect the petitioner.

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

15 (A) Order the respondent to refrain from committing or  
16 threatening to commit an act specified in subsection (a), section  
17 four of this article against the petitioner;

18 (B) Order the respondent to refrain from contacting,  
19 attempting to contact or harassing the petitioner directly,  
20 indirectly or through third parties regardless of whether those  
21 third parties know of the order;

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

24 (D) Order the respondent to remain away from the place of

1 employment, school or residence of the petitioner;

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

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

9 (I) A weapon was used or threatened to be used in the  
10 commission of the offense predicated the petitioning for the  
11 personal safety order;

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

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

16 (G) Direct the respondent to participate in professionally  
17 supervised counseling or, if the parties are amenable, mediation;  
18 and

19 (H) Order either party to pay filing fees and costs of a  
20 proceeding pursuant to section thirteen of this article.

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

24 (b) *Immediate*. -- The temporary personal safety order shall be

1 immediately served on the respondent by law enforcement, or at the  
2 option of the petitioner, pursuant to rules promulgated pursuant to  
3 section fifteen of this article.

4 (c) *Length of effectiveness.* --

5 (1) The temporary personal safety order shall be effective for  
6 not more than thirty days after service of the order.

7 (2) The magistrate may extend the temporary personal safety  
8 order as needed but not to exceed an additional thirty days and to  
9 effectuate service of the order where necessary to provide  
10 protection or for other good cause.

11 (d) *Final personal safety order hearing.* -- The magistrate may  
12 proceed with a final personal safety order hearing instead of a  
13 temporary personal safety order hearing if:

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

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

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

19 **§53-8-6. Respondent's opportunity to be heard; notice to**  
20 **respondent.**

21 (a) *Respondent's opportunity to be heard.* -- A respondent  
22 shall have an opportunity to be heard on the question of whether  
23 the magistrate should issue a final personal safety order subject  
24 to the provisions of this section.

1 (b) *Personal safety order hearing.* -- Date and time; notice.

2 (1) (A) The temporary personal safety order shall state the  
3 date and time of the final personal safety order hearing.

4 (B) Unless continued for good cause, the final personal safety  
5 order hearing shall be held no later than thirty days after the  
6 temporary personal safety order is served on the respondent.

7 (2) The temporary personal safety order shall include notice  
8 to the respondent:

9 (A) In at least ten-point bold type, that if the respondent  
10 fails to appear at the final personal safety order hearing, the  
11 respondent may be served by first-class mail at the respondent's  
12 last known address with the final personal safety order and all  
13 other notices concerning the final personal safety order;

14 (B) Specifying all the possible forms of relief under  
15 subsection (d) of section seven, that the final personal safety  
16 order may contain;

17 (C) That the final personal safety order shall be effective  
18 for the period stated in the order, not to exceed two years; and

19 (D) In at least ten-point bold type, that the respondent must  
20 notify the court in writing of any change of address.

21 **§53-8-7. Personal safety hearing; forms of relief.**

22 (a) *Final personal safety order hearing.* --

23 *Proceeding; issuance of order.* -- If the respondent appears  
24 for the final personal safety order hearing, has been served with

1 a temporary personal safety order or the respondent waives personal  
2 service, the magistrate:

3 (1) May proceed with the final personal safety order hearing;  
4 and

5 (2) May issue a final personal safety order to protect the  
6 petitioner if the court finds by a preponderance of the evidence  
7 that:

8 (A) (I) The respondent has committed an act specified in  
9 subsection (a), section four of this article against the  
10 petitioner; and

11 (ii) The petitioner has a reasonable apprehension of continued  
12 unwanted or unwelcome contacts by the respondent; or

13 (B) The respondent consents to the entry of a personal safety  
14 order.

15 (b) A final personal safety order may be issued only to an  
16 individual who has filed a petition or on whose behalf a petition  
17 was filed under section three of this article.

18 (c) In cases where both parties file a petition under section  
19 three of this article, the court may issue mutual personal safety  
20 orders if the court finds by a preponderance of the evidence that:

21 (1) Each party has committed an act specified in subsection  
22 (a), section four of this article against the other party; and

23 (2) Each party has a reasonable apprehension of continued  
24 unwanted or unwelcome contacts by the other party.

1           (d) *Personal safety order - Forms of relief.* --

2           (1) The final personal safety order may include any or all of  
3 the following relief:

4           (A) Order the respondent to refrain from committing or  
5 threatening to commit an act specified in subsection (a), section  
6 four of this article against the petitioner;

7           (B) Order the respondent to refrain from contacting,  
8 attempting to contact or harassing the petitioner directly,  
9 indirectly, or through third parties regardless of whether those  
10 third parties know of the order;

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

13          (D) Order the respondent to remain away from the place of  
14 employment, school or residence of the petitioner;

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

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

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

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

3 (iii) The respondent has been convicted of an offense involving  
4 the use of a firearm.

5 (G) Direct the respondent to participate in professionally  
6 supervised counseling or, if the parties are amenable, mediation;  
7 and

8 (H) Order either party to pay filing fees and costs of a  
9 proceeding pursuant to section thirteen of this article.

10 (2) If the magistrate issues an order under this section, the  
11 order shall contain only the relief necessary to protect the  
12 petitioner.

13 (e) *Personal safety order - Service.* --

14 (1) A copy of the final personal safety order shall be served  
15 on the petitioner, the respondent, the appropriate law-enforcement  
16 agency and any other person the court determines is appropriate,  
17 including a county board of education, in open court or, if the  
18 person is not present at the final personal safety order hearing,  
19 by first-class mail to the person's last known address or by other  
20 means in the discretion of the court.

21 (2) (A) A copy of the final personal safety order served on  
22 the respondent in accordance with subdivision (1) of this  
23 subsection or the hearing the announcement of the court's ruling in  
24 court, constitutes actual notice to the respondent of the contents



1 of the final personal safety order.

2 (B) Service is complete upon mailing.

3 (f) *Length of effectiveness.* -- All relief granted in a final  
4 personal safety order shall be effective for the period stated in  
5 the order, not to exceed two years.

6 **§53-8-8. Modification and rescission.**

7 (a) A personal safety order may be modified or rescinded  
8 during the term of the personal safety order after:

9 (1) Giving notice to the petitioner and the respondent; and

10 (2) A hearing.

11 (b) Modification may include extending the term of the  
12 personal safety order if the order was previously issued for a term  
13 of less than the two-year maximum term set forth in section six of  
14 this article.

15 **§53-8-9. Appeals.**

16 (a) If a magistrate grants or denies relief under a petition  
17 filed under this article, a respondent or a petitioner may appeal  
18 to the circuit court for the county where the magistrate court is  
19 located.

20 (b) An appeal taken under this section shall be heard de novo  
21 in the circuit court.

22 (c) (1) If an appeal is filed under this section, the  
23 magistrate court judgment shall remain in effect until superseded  
24 by a judgment of the circuit court; and

1 (2) Unless the circuit court orders otherwise, modification or  
2 enforcement of the magistrate court order shall be by the  
3 magistrate court.

4 **§53-8-10. Statement concerning violations.**

5 A temporary personal safety order and final personal safety  
6 order issued under this article shall state that a violation of the  
7 order may result in:

- 8 (1) Criminal prosecution; and
- 9 (2) Incarceration, fine or both.

10 **§53-8-11. Penalties.**

11 (a) *Fines or incarceration.* -- An individual who fails to  
12 comply with the relief granted in a temporary personal safety order  
13 or a final personal safety order entered pursuant to this article  
14 is guilty of a misdemeanor and, upon conviction thereof, shall:

- 15 (1) For a first offense, be fined not more than \$1,000 or  
16 confined in jail not more than ninety days, or both; and
- 17 (2) For a second or subsequent offense, be fined not more than  
18 \$2,500 or confined in jail not more than one year, or both.

19 (b) *Arrest.* -- A law-enforcement officer shall arrest with or  
20 without a warrant and take into custody an individual who the  
21 officer has probable cause to believe is in violation of a  
22 temporary or final personal safety order in effect at the time of  
23 the violation.

24 **§53-8-12. Priority of petitions.**

1 Any petition filed in magistrate court under the provisions of  
2 this article shall be given priority over any other civil action  
3 before the court, except actions pursuant to article twenty-seven,  
4 chapter forty-eight of this code and those in which trial is in  
5 progress, and shall be docketed immediately upon filing.

6 **§53-8-13. Fees and costs.**

7 (a) *Charges for fees and costs postponed.* -- No fees may be  
8 charged for the filing of petitions or other papers, service of  
9 petitions or orders, copies of orders or other costs for services  
10 provided by, or associated with, any proceedings under this article  
11 until the matter is brought before the court for final resolution.

12 (b) *Assessment of court costs and fees when temporary order is*  
13 *denied.* -- If the petition is denied, court costs and fees shall be  
14 assessed by the magistrate against the petitioner at the conclusion  
15 of the temporary hearing, unless a fee waiver affidavit reflecting  
16 inability to pay has been filed or prohibited by federal law.

17 (c) Costs and fees may not be assessed against a prevailing  
18 party.

19 (d) *Assessment of court costs and fees when personal safety*  
20 *order is granted.* -- Except as in subsection (c), court costs and  
21 fees shall be assessed by the court at the conclusion of a  
22 proceeding, unless a fee waiver affidavit reflecting inability to  
23 pay has been filed.

24 (e) *Assessment of court costs and fees when petitioner moves*

1 to terminate order. -- No court costs or fees shall be assessed  
2 against a petitioner who moves to terminate an order, whether the  
3 court grants or denies the motion.

4 (f) A person seeking waiver of fees, costs or security  
5 pursuant to section one, article two, chapter fifty-nine of this  
6 code shall execute before the clerk where the matter is pending a  
7 fee waiver affidavit which shall be kept confidential. An  
8 additional fee waiver affidavit shall be filed whenever the  
9 financial condition of the person no longer conforms to the  
10 financial condition established by the Supreme Court of Appeals for  
11 determining inability to pay fees or whenever an order has been  
12 entered directing the filing of a new affidavit.

13 **§53-8-14. Service by law enforcement.**

14 Notwithstanding any other provision of this code to the  
15 contrary, all law-enforcement officers are hereby authorized and  
16 required to serve all pleadings and orders filed or entered  
17 pursuant to this article on Sundays and legal holidays. No law-  
18 enforcement officer may refuse to serve any pleadings or orders  
19 entered pursuant to this article. Law enforcement shall attempt to  
20 serve all orders without delay: *Provided*, That service of process  
21 shall be attempted within seventy-two hours of law enforcement's  
22 receipt of the order. If service is not made, law enforcement  
23 shall continue to attempt service on the respondent until proper  
24 service is made.

1 **§53-8-15. Rules and forms.**

2 (a) *Authorized.* -- The Supreme Court of Appeals may adopt  
3 rules and forms to implement the provisions of this article.

4 (b) *Petition form.* --

5 (1) The Supreme Court of Appeals is requested to adopt a form  
6 for a petition under this article.

7 (2) A petition form shall contain notice to a petitioner that  
8 an individual who knowingly provides false information in a  
9 petition filed under this subtitle is guilty of a misdemeanor and,  
10 on conviction, is subject to the penalties specified in section  
11 four of this article.

12 **§53-8-16. Limitation on use of information.**

13 Nothing in this article authorizes the inclusion of  
14 information contained in petition, pleadings or orders provided for  
15 by this article to be submitted to any local, state, interstate,  
16 national or international systems of criminal identification  
17 pursuant to section twenty-four, article two, chapter fifteen of  
18 this code. Nothing in this section prohibits the West Virginia  
19 State Police from processing information through its criminal  
20 identification bureau with respect to any actual charge or  
21 conviction of a crime.

22 **§53-8-17. Immunity from liability.**

23 A person who seeks relief pursuant to the article who is  
24 acting in good faith is immune from criminal and civil liability

1 for those actions.

2 **§53-8-18. Sealing of records.**

3 (a) *Definitions.* --

4 (1) In this section the following words have the meanings  
5 indicated.

6 (2) "Court record" means an official record of a court about  
7 a proceeding that the clerk of a court or other court personnel  
8 keeps. "Court record" includes an index, a docket entry, a petition  
9 or other pleading, a memorandum, a transcription of proceedings, an  
10 electronic recording, an order and a judgment.

11 (3) "Seal" means to remove information from public inspection  
12 in accordance with this section.

13 (4) "Sealing" means:

14 (A) With respect to a record kept in a courthouse, removing to  
15 a separate secure area to which persons who do not have a  
16 legitimate reason for access are denied access;

17 (B) With respect to electronic information about a proceeding  
18 on the website maintained by the magistrate court, circuit court or  
19 the Supreme Court of Appeals, removing the information from the  
20 public website; and

21 (C) With respect to a record maintained by any law-enforcement  
22 agency, by removing to a separate secure area to which persons who  
23 do not have a legitimate reason for access are denied access.

24 (b) *Written request.* -- Either party to a petition filed

1 pursuant to this article may file a written request with the  
2 circuit to seal all court records relating to the proceeding.

3 (c) *Timing.* -- A request for sealing under this section may  
4 not be filed within two years after the entry of a final order, or  
5 the denial or dismissal of the petition.

6 (d) *Notice, hearing and findings.* --

7 (1) On the filing of a request for sealing under this section,  
8 the circuit court shall schedule a hearing on the request.

9 (2) The court shall give notice of the hearing to the parties.

10 (3) After the hearing, the court shall order the sealing of  
11 all court records relating to the proceeding if the court finds:

12 (A) Good cause to grant the request. In determining whether  
13 there is good cause to grant the request to seal court records, the  
14 court shall balance the privacy and potential danger of adverse  
15 consequences to the parties against the potential risk of future  
16 harm and danger to the petitioner and the community; and

17 (B) That none of the following are pending at the time of the  
18 hearing:

19 (I) A temporary personal safety order or protective order  
20 issued against the respondent in a proceeding between the  
21 petitioner and the respondent; or

22 (ii) A criminal charge against the respondent arising from an  
23 alleged act described in subsection (a) section four of this  
24 article in which the petitioner is the victim.

1           (e) *Access to a sealed record.* --

2           (1) This section does not preclude the following persons from  
3 accessing a sealed record for a legitimate reason:

4           (A) A law-enforcement officer;

5           (B) An attorney who represents or has represented the  
6 petitioner or the respondent in a proceeding;

7           (C) A prosecuting attorney; or

8           (D) An employee of the Department of Health and Human  
9 Resources.

10          (2) (A) A person not listed in subdivision (1) of this  
11 subsection may subpoena or file a motion for access to a record  
12 sealed under this section.

13          (B) If the circuit court finds that the person has a  
14 legitimate reason for access, the court may grant the person access  
15 to the sealed record under the terms and conditions that the court  
16 determines.

17          (C) In ruling on a motion under this subdivision, the court  
18 shall balance the person's need for access to the record with the  
19 respondent's right to privacy and the potential harm of unwarranted  
20 adverse consequences to the respondent that the disclosure may  
21 create.

22          (f) *Compliance with order.* -- Within sixty days after entry of  
23 an order under subdivision (3), subsection (d) of this section,  
24 each custodian of court records that are subject to the order of



1 sealing shall advise in writing the court and the parties of  
2 compliance with the order.