

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 191**

5 (SENATORS KESSLER (MR. PRESIDENT), STOLLINGS, UNGER, LAIRD AND JENKINS,
6 *original sponsors*)

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8 _____
9 [Passed March 7, 2012; in effect ninety days from passage.]
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12 AN ACT 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 and §53-8-17, all relating to personal safety orders;
17 confidentiality of proceedings; who may file a petition;
18 contents of petition; temporary hearing and relief available;
19 contents of temporary order; respondent's opportunity to be
20 heard; notice to respondent; final hearing and forms of
21 relief; modification and rescission; appeals; criminal
22 penalties; priority of petitions; fees and costs; service by
23 law enforcement; rules and forms; limitation on use of
24 information; and the sealing of records.

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

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

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

8 **§53-8-1. Definitions.**

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

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

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

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

23 (4) *Petitioner.* -- "Petitioner" means an individual who files
24 a petition under section four of this article.

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

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

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

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

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

24 (A) Section nine, article eight, chapter sixty-one of this

1 code;

2 (B) Section twelve, article eight, chapter sixty-one of this

3 code;

4 (C) Section two, article eight-a, chapter sixty-one of this

5 code;

6 (D) Section four, article eight-a, chapter sixty-one of this

7 code;

8 (E) Section five, article eight-a, chapter sixty-one of this

9 code;

10 (F) Section three, article eight-b, chapter sixty-one of this

11 code;

12 (G) Section four, article eight-b, chapter sixty-one of this

13 code;

14 (H) Section five, article eight-b, chapter sixty-one of this

15 code;

16 (I) Section seven, article eight-b, chapter sixty-one of this

17 code;

18 (J) Section eight, article eight-b, chapter sixty-one of this

19 code;

20 (K) Section nine, article eight-b, chapter sixty-one of this

21 code;

22 (L) Section two, article eight-c, chapter sixty-one of this

23 code;

24 (M) Section three, article eight-c, chapter sixty-one of this

1 code;

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

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

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

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

11 **§53-8-2. Confidentially of proceedings.**

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

1 file. Sealed court files shall be opened only pursuant to section
2 eighteen of this article.

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

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

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

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

1 **§53-8-3. Who may file; exclusivity; applicability of article.**

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

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

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

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

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

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

20 **§53-8-4. Petition seeking relief.**

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

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

3 (2) A violation of section nine-a, article two, chapter sixty-
4 one of this code.

5 (b) *Contents.* --

6 The petition shall:

7 (1) Be verified and provide notice to the petitioner that an
8 individual who knowingly provides false information in the petition
9 is guilty of a misdemeanor and on conviction is subject to the
10 penalties specified in subsection (d) of this section;

11 (2) Subject to the provisions of subsection (c) of this
12 section, contain the address of the petitioner; and

13 (3) Include all information known to the petitioner of:

14 (A) The nature and extent of the act specified in subsection
15 (a) of this section for which the relief is being sought, including
16 information known to the petitioner concerning previous harm or
17 injury resulting from an act specified in subsection (a) of this
18 section by the respondent;

19 (B) Each previous and pending action between the parties in
20 any court; and

21 (C) The whereabouts of the respondent.

22 (c) *Address may be stricken.* -- If, in a proceeding under
23 this article, a petitioner alleges, and the court finds, that the
24 disclosure of the address of the petitioner would risk further harm

1 to the petitioner or a member of the petitioner's household, that
2 address may be stricken from the petition and omitted from all
3 other documents filed with, or transferred to, a court.

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

9 (e) *Withdrawal or dismissal of a petition prior to*
10 *adjudication operates as a dismissal without prejudice.* -- No
11 action for a personal safety order may be dismissed because the
12 respondent is being prosecuted for a crime against the petitioner.
13 For any action commenced under this article, dismissal of a case or
14 a finding of not guilty, does not require dismissal of the action
15 for a civil protection order.

16 **§53-8-5. Temporary personal safety orders.**

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

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

24 (2) The temporary personal safety order may include any or all

1 of the following relief:

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

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

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

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

17 (E) Order the respondent not to visit, assault, molest or
18 otherwise interfere with the petitioner and, if the petitioner is
19 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
22 from possessing a firearm as defined in section seven, article
23 seven, chapter sixty-one of this code if:

24 (I) A weapon was used or threatened to be used in the

1 commission of the offense predicated the petitioning for the
2 personal safety order;

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

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

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

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

12 (b) *Immediate.* -- The temporary personal safety order shall
13 be immediately served on the respondent by law enforcement, or at
14 the option of the petitioner, pursuant to rules promulgated
15 pursuant to section fifteen of this article.

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

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

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

23 (d) *Final personal safety order hearing.* -- The magistrate
24 may proceed with a final personal safety order hearing instead of

1 a temporary personal safety order hearing if:

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

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

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

7 **§53-8-6. Respondent's opportunity to be heard; notice to**
8 **respondent.**

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

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

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

16 (B) Unless continued for good cause, the final personal safety
17 order hearing shall be held no later than ten days after the
18 temporary personal safety order is served on the respondent.

19 (2) The temporary personal safety order shall include notice
20 to the respondent:

21 (A) In at least ten-point bold type, that if the respondent
22 fails to appear at the final personal safety order hearing, the
23 respondent may be served by first-class mail at the respondent's
24 last known address with the final personal safety order and all

1 other notices concerning the final personal safety order;

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

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

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

9 **§53-8-7. Personal safety hearing; forms of relief.**

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

11 *Proceeding; issuance of order.* -- If the respondent appears
12 for the final personal safety order hearing, has been served with
13 a temporary personal safety order or the respondent waives personal
14 service, the magistrate:

15 (1) May proceed with the final personal safety order hearing;
16 and

17 (2) May issue a final personal safety order to protect the
18 petitioner if the court finds by a preponderance of the evidence
19 that:

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

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

1 (B) The respondent consents to the entry of a personal safety
2 order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (2) If the magistrate issues an order under this section, the
20 order shall contain only the relief necessary to protect the
21 petitioner.

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

23 (1) A copy of the final personal safety order shall be served
24 on the petitioner, the respondent, the appropriate law-enforcement

1 agency and any other person the court determines is appropriate,
2 including a county board of education, in open court or, if the
3 person is not present at the final personal safety order hearing,
4 by first-class mail to the person's last known address or by other
5 means in the discretion of the court.

6 (2) (A) A copy of the final personal safety order served on
7 the respondent in accordance with subdivision (1) of this
8 subsection or the hearing of the announcement of the court's ruling
9 in court, constitutes actual notice to the respondent of the
10 contents of the final personal safety order.

11 (B) Service is complete upon mailing.

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

15 **§53-8-8. Modification and rescission.**

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

- 18 (1) Giving notice to the petitioner and the respondent; and
19 (2) A hearing.

20 (b) Modification may include extending the term of the
21 personal safety order if the order was previously issued for a term
22 of less than the two-year maximum term set forth in section seven
23 of this article.

24 **§53-8-9. Appeals.**

1 (a) If a magistrate grants or denies relief under a petition
2 filed under this article, a respondent or a petitioner may appeal
3 to the circuit court for the county where the magistrate court is
4 located.

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

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

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

13 **§53-8-10. Statement concerning violations.**

14 A temporary personal safety order and final personal safety
15 order issued under this article shall state that a violation of the
16 order may result in:

17 (1) Criminal prosecution; and

18 (2) Incarceration, fine or both.

19 **§53-8-11. Penalties.**

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

24 (1) For a first offense, be fined not more than \$1,000 or

1 confined in jail not more than ninety days, or both; and

2 (2) For a second or subsequent offense, be fined not more than
3 \$2,500 or confined in jail not more than one year, or both.

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

9 **§53-8-12. Priority of petitions.**

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

15 **§53-8-13. Fees and costs.**

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

21 (b) *Assessment of court costs and fees when temporary order is*
22 *denied.* -- If the petition is denied, court costs and fees shall
23 be assessed by the magistrate against the petitioner at the
24 conclusion of the temporary hearing, unless a fee waiver affidavit

1 reflecting inability to pay has been filed or prohibited by federal
2 law.

3 (c) Costs and fees may not be assessed against a prevailing
4 party.

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

10 (e) *Assessment of court costs and fees when petitioner moves*
11 *to terminate order.* -- No court costs or fees shall be assessed
12 against a petitioner who moves to terminate an order, whether the
13 court grants or denies the motion.

14 (f) A person seeking waiver of fees, costs or security
15 pursuant to section one, article two, chapter fifty-nine of this
16 code shall execute before the clerk where the matter is pending a
17 fee waiver affidavit which shall be kept confidential. An
18 additional fee waiver affidavit shall be filed whenever the
19 financial condition of the person no longer conforms to the
20 financial condition established by the Supreme Court of Appeals for
21 determining inability to pay fees or whenever an order has been
22 entered directing the filing of a new affidavit.

23 **§53-8-14. Service by law enforcement.**

24 Notwithstanding any other provision of this code to the

1 contrary, all law-enforcement officers are hereby authorized and
2 required to serve all pleadings and orders filed or entered
3 pursuant to this article on Sundays and legal holidays. No law-
4 enforcement officer may refuse to serve any pleadings or orders
5 entered pursuant to this article. Law enforcement shall attempt to
6 serve all orders without delay: *Provided*, That service of process
7 shall be attempted within seventy-two hours of law enforcement's
8 receipt of the order. If service is not made, law enforcement
9 shall continue to attempt service on the respondent until proper
10 service is made.

11 **§53-8-15. Rules and forms.**

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

14 (b) *Petition form.* --

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

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

22 **§53-8-16. Limitation on use of information.**

23 Nothing in this article authorizes the inclusion of
24 information contained in petition, pleadings or orders provided for

1 by this article to be submitted to any local, state, interstate,
2 national or international systems of criminal identification
3 pursuant to section twenty-four, article two, chapter fifteen of
4 this code. Nothing in this section prohibits the West Virginia
5 State Police from processing information through its criminal
6 identification bureau with respect to any actual charge or
7 conviction of a crime.

8 **§53-8-17. Sealing of records.**

9 (a) *Definitions.* --

10 (1) In this section the following words have the meanings
11 indicated.

12 (2) "Court record" means an official record of a court about
13 a proceeding that the clerk of a court or other court personnel
14 keeps. "Court record" includes an index, a docket entry, a
15 petition or other pleading, a memorandum, a transcription of
16 proceedings, an electronic recording, an order and a judgment.

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

19 (4) "Sealing" means:

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

23 (B) With respect to electronic information about a proceeding
24 on the website maintained by the magistrate court, circuit court or

1 the Supreme Court of Appeals, removing the information from the
2 public website; and

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

6 (b) *Written request.* -- Either party to a petition filed
7 pursuant to this article may file a written request with the clerk
8 to seal all court records relating to the proceeding.

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

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

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

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

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

18 (A) Good cause to grant the request. In determining whether
19 there is good cause to grant the request to seal court records, the
20 court shall balance the privacy and potential danger of adverse
21 consequences to the parties against the potential risk of future
22 harm and danger to the petitioner and the community; and

23 (B) That none of the following are pending at the time of the
24 hearing:

1 (I) A temporary personal safety order or protective order
2 issued against the respondent in a proceeding between the
3 petitioner and the respondent; or

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

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

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

10 (A) A law-enforcement officer;

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

13 (C) A prosecuting attorney; or

14 (D) An employee of the Department of Health and Human
15 Resources.

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

19 (B) If the court finds that the person has a legitimate reason
20 for access, the court may grant the person access to the sealed
21 record under the terms and conditions that the court determines.

22 (C) In ruling on a motion under this subdivision, the court
23 shall balance the person's need for access to the record with the
24 respondent's right to privacy and the potential harm of unwarranted

1 adverse consequences to the respondent that the disclosure may
2 create.

3 (f) *Compliance with order.* -- Within sixty days after entry
4 of an order under subdivision (3), subsection (d) of this section,
5 each custodian of court records that are subject to the order of
6 sealing shall advise in writing the court and the parties of
7 compliance with the order.