

1 **Senate Bill No. 386**

2 (By Senators Cookman, Plymale and Palumbo)

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 4 [Introduced February 27, 2013; referred to the Committee on the
 5 Judiciary.]

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 10 A BILL to amend and reenact §53-8-4 of the Code of West Virginia,
 11 1931, as amended, relating generally to personal safety
 12 orders; limiting the issuance of personal safety orders for
 13 harassment; and establishing the proper venue for issuance of
 14 a personal safety order.

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

16 That §53-8-4 of the Code of West Virginia, 1931, as amended,
 17 be amended and reenacted to read as follows:

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

19 **§53-8-4. Petition seeking relief.**

20 (a) *Underlying acts.* -- A petitioner may seek relief under
 21 this article by filing with a magistrate court a petition that
 22 alleges the commission of any of the following acts against the
 23 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 subsection (a), section nine-a, article
4 two, chapter sixty-one of this code; or

5 (3) A violation of subsection (b), section nine-a, article
6 two, chapter sixty-one of this code in which the respondent
7 repeatedly harasses or repeatedly makes credible threats of bodily
8 injury knowing or having reason to know that the conduct causes the
9 person to reasonably fear for his or her safety or suffer
10 significant emotional distress.

11 (b) *Contents.* --

12 The petition shall:

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

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

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

20 (A) The nature and extent of the act specified in subsection
21 (a) of this section for which the relief is being sought, including
22 information known to the petitioner concerning previous harm or
23 injury resulting from an act specified in subsection (a) of this
24 section by the respondent;

1 (B) Each previous and pending action between the parties in
2 any court; and

3 (C) The whereabouts of the respondent.

4 (c) *Address may be stricken.* -- If, in a proceeding under
5 this article, a petitioner alleges, and the court finds, that the
6 disclosure of the address of the petitioner would risk further harm
7 to the petitioner or a member of the petitioner's household, that
8 address may be stricken from the petition and omitted from all
9 other documents filed with, or transferred to, a court.

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

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

22 (f) Venue. -- The action may be heard in the county in which
23 any underlying act occurred for which relief is sought in the
24 petition, in the county in which the respondent is living, or in

1 the county in which the petitioner is living, either temporarily or
2 permanently.

NOTE: The purpose of this bill is to limit the grounds upon which a personal safety order may issue. Since the Personal Safety Act went into effect in 2012, there have been a number of petitions filed which alleged harassment that was of a very minor or even frivolous nature. This bill is designed to prevent nonserious grounds from being a basis for a personal safety order by requiring that the "harassment" or "threats of bodily injury" be a repeated behavior. Additionally, this bill establishes the proper venue in which such petition may be filed. Some petitioners have been sent to several different magistrate courts because current law does not specify the proper venue in which a PSO may issue. This is a particular problem in cases where the parties do not live in the same county or the acts that led to the petition occurred in a county other than the one in which the petitioner resides. This bill is a product of a work group consisting of court personnel, representatives of the domestic violence coalition, and other victim rights groups who met several times over the past year for the purposes of resolving these issues.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.