

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 444**

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

6 _____
7 [Originating in the Committee on Judiciary;
8 reported February, 2011.]
9 _____

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11
12 A BILL to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new article, designated §62-10A-1, §62-10A-2,
14 §62-10A-3, §62-10A-4, §62-10A-5, §62-10A-6, §62-10A-7, §62-
15 10A-8, §62-10A-9, §62-10A-10, §62-10A-11, §62-10A-12, §62-10A-
16 13, §62-10A-14, §62-10A-15, §62-10A-16, §62-10A-17, §62-10A-
17 18, §62-10A-19, §62-10A-20, §62-10A-21, §62-10A-22, §62-10A-
18 23, §62-10A-24, §62-10A-25, §62-10A-26, §62-10A-27 and §62-
19 10A-28, all relating to the protection of nonfamily or
20 nonhousehold members; setting forth the purpose of the
21 article; defining terms; establishing jurisdiction of
22 magistrate and circuit courts; establishing venue for actions;
23 establishing procedures for filing petitions, hearings, entry
24 of orders and contents of orders; declaring orders effective
25 statewide; establishing means of service of process; making
26 proceedings confidential; making rules of evidence applicable
27 to proceedings; establishing time periods for orders;
28 prohibiting mutual orders; establishing procedures for appeals

1 and pursuing of records; requiring orders be filed in domestic
2 violence database; limiting use of information obtained during
3 proceedings; allowing for civil contempt for violations of
4 orders; creating offenses for violations of protection orders;
5 directing Supreme Court of Appeals to create forms; granting
6 immunity to persons seeking orders; orders in good faith; and
7 establishing penalties.

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

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

17 **CHAPTER 62. CRIMINAL PROCEDURE.**

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

19 **§62-10A-1. Purpose.**

20 The Legislature finds that:

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

24 (2) The Legislature of this state hereby finds that the
25 issuance and enforcement of protection orders to persons against
26 whom crimes of violence have been committed or threatened by
27 nonfamily or nonhousehold members are necessary in the State of

1 West Virginia because such protection orders can promote safety,
2 reduce violence and prevent serious harm and death.

3 **§62-10a-2. Definitions**

4 (a) "Crime of violence against the person" means offenses set
5 forth in articles two, eight-b or eight-d of chapter sixty-one of
6 this code.

7 (b) "Emergency hearing" under this article means the hearing
8 before a magistrate upon the filing of a petition for a personal
9 safety civil protection order. An emergency hearing may be held ex
10 parte.

11 (c) "Final hearing" under this article means the hearing
12 before a circuit court judge following the entry of a personal
13 safety civil protection order by a magistrate as a result of the
14 emergency hearing.

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

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

26 (f) "Law enforcement officer" means any duly authorized member
27 of a law-enforcement agency who is authorized to maintain public
28 peace and order, prevent and detect crime, make arrests and enforce

1 the laws of the state or any county or municipality thereof, other
2 than parking ordinances.

3 (g) "Personal safety protection order" under this article is
4 an emergency civil protection order entered by a magistrate as a
5 result of the emergency hearing or personal safety civil protection
6 order entered by a circuit court upon final hearing that affords
7 protection to persons who do not meet the definition of family or
8 household member under section two hundred four, article twenty-
9 seven, chapter forty-eight of this code.

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

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

13 (b) The petition may be filed in the county in which any crime
14 of violence against the person occurred, in the county in which the
15 respondent is living or in the county in which the petitioner is
16 living, either temporarily or permanently.

17 **§62-10A-4. Commencement of proceeding.**

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

20 (b) No person shall be refused the right to file a petition
21 under the provisions of this article. No person shall be denied
22 relief under the provisions of this article if she or he presents
23 facts sufficient under the provisions of this article for the
24 relief sought.

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

26 (1) The respondent was voluntarily intoxicated;

27 (2) The petitioner acted in self-defense or defense of
28 another; or

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

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

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

6 (2) Charges are filed; or

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

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

11 (1) Any labor or employment relations issue;

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

14 (3) Activities protected by the West Virginia Constitution or
15 the United States Constitution or any statute of this state or the
16 United States.

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

25 **§62-10A-5. Persons who may file petition; persons accompanying**
26 **petitioner.**

27 (a) A petition for a personal safety protection order may be
28 filed by:

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

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

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

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

14 **§62-10A-6. Charging of fees prohibited.**

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

20 **§62-10A-7. Statewide applicability.**

21 Any personal safety protection order issued pursuant to this
22 article is effective throughout the state in every county. Any
23 other comparable protection order issued by any other state of the
24 United States, the District of Columbia, Puerto Rico, the United
25 States Virgin Islands or a territory or insular possession subject
26 to the jurisdiction of the United States or an Indian tribe or band
27 that has jurisdiction to issue protection orders shall be accorded
28 full faith and credit.

1 **§62-10A-8. Service of process.**

2 (a) A personal safety protection order may be served on the
3 respondent by means of a Class I legal advertisement published
4 notice, with the publication area being the county in which the
5 respondent resides, published in accordance with the provisions of
6 section two, article three, chapter fifty-nine of this code if:

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

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

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

21 **§62-10A-9. Confidentiality; identifying information; proceedings**
22 **closed to public.**

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

26 (b) If a party alleges in an affidavit or a pleading under
27 oath that the safety of a party or child would be jeopardized by
28 disclosure of identifying information, the identifying information

1 must be sealed by the clerk and not disclosed to the other party or
2 to the public unless the court orders the disclosure to be made
3 after a hearing in which the court takes into consideration the
4 safety of the party or child and determines that the disclosure is
5 in the interest of justice.

6 (c) All orders are public records.

7 **§62-10A-10. Evidence presented in hearing.**

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

10 (b) Copies of medical reports or records may be admitted into
11 evidence to the same extent as though the original thereof. The
12 custodian of such records shall not be required to be present to
13 authenticate such records for any proceeding held pursuant to this
14 subsection.

15 **§62-10A-11. Personal safety protection orders; hearings; persons
16 present.**

17 (a) Upon the filing of a verified petition under this article,
18 the magistrate court may enter an emergency personal safety
19 protection order as it may deem necessary to protect the petitioner
20 and, upon good cause shown, may do so ex parte without the
21 necessity of bond being given by the petitioner. Clear and
22 convincing evidence of immediate and present danger of bodily
23 injury to the petitioner constitutes good cause for the issuance of
24 an emergency personal safety protection order pursuant to this
25 section. If the respondent is not present at the proceeding, the
26 petitioner or the petitioner's legal representative shall certify
27 to the court, in writing, the efforts which have been made to give
28 notice to the respondent or just cause why notice should not be

1 required.

2 (b) Following the proceeding, the magistrate court shall order
3 a copy of the petition to be served immediately upon the
4 respondent, together with a copy of any emergency personal safety
5 protection order entered pursuant to the proceedings, a notice of
6 the final hearing before the circuit court and a statement of the
7 right of the respondent to appear and participate in the final
8 hearing, as provided in subsection (d) of this section. Copies of
9 any order entered under the provisions of this section, a notice of
10 the final hearing before the circuit court and a statement of the
11 right of the petitioner to appear and participate in the final
12 hearing, as provided in subsection (d) of this section, shall also
13 be delivered to the petitioner. Copies of any order entered shall
14 also be delivered to any law-enforcement agency having jurisdiction
15 to enforce the order, including, but not limited to, municipal
16 police, the county sheriff's office and local office of the State
17 Police, within twenty-four hours of the entry of the order. An
18 emergency personal safety protection order is effective until
19 modified by order of the circuit court upon hearing as provided in
20 subsection (d) of this section.

21 (c) Subsequent to the entry of the emergency personal safety
22 protection order, service on the respondent and the delivery to the
23 petitioner and law-enforcement officers, the court file shall be
24 transferred to the office of the clerk of the circuit court for use
25 by the circuit court.

26 (d) The circuit court shall schedule a final hearing on each
27 petition in which an emergency personal safety protection order has
28 been entered by a magistrate. The hearing shall be scheduled not

1 later than thirty days following the entry of the order by the
2 magistrate. The notice of the final hearing shall be served on the
3 respondent and delivered to the petitioner, as provided in
4 subsection (b) of this section and must set forth the hearing date,
5 time and place and include a statement of the right of the parties
6 to appear and participate in the final hearing. The notice must
7 also provide that the petitioner's failure to appear may result in
8 a dismissal of the petition and that the respondent's failure to
9 appear may result in the entry of a final personal safety
10 protection order against him or her for a period of eighteen
11 months. The notice must also include the name, mailing address,
12 physical location and telephone number of the circuit court having
13 jurisdiction over the proceedings. To facilitate the preparation of
14 the notice of final hearing required by the provisions of this
15 subsection, the circuit court must provide the magistrate court
16 with a day and time in which final hearings or status conferences
17 may be scheduled before the circuit court within the time required
18 by law.

19 (e) Upon final hearing, the petitioner must prove, by a
20 preponderance of the evidence, the allegation of a crime of
21 violence against the person or the making of credible threats to do
22 so and that such conduct is likely to reoccur or that respondent
23 persists in contacting or attempting to contact petitioner or that
24 he or she reported or witnessed a crime of violence against the
25 person the making of credible threats against another to do so and
26 has, as a result, been abused, threatened, harassed or has been the
27 subject of other actions to attempt to intimidate him or her, or
28 such petition shall be dismissed by the circuit court. If the

1 respondent has not been served with notice of the emergency
2 personal safety protection order, the hearing may be continued to
3 permit service to be effected. The failure to obtain service upon
4 the respondent does not constitute a basis for dismissal of the
5 petition.

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

11 (g) Upon hearing, the circuit court may dismiss the petition
12 or enter a personal safety protection order for a period of
13 eighteen months. The hearing may be continued on motion of the
14 respondent in the discretion of the court. Otherwise, the hearing
15 may be continued by the court no more than seven days. If a hearing
16 is continued, the circuit court may modify the emergency personal
17 safety protection order as it deems necessary.

18 **§62-10A-12. Issuance of personal safety protection order;**
19 **modification of final order.**

20 (a) Upon final hearing, the court shall enter a personal
21 safety protection order if it finds, after hearing the evidence,
22 that the petitioner has proven the allegations in the petition. If
23 the respondent is present at the hearing and elects not to contest
24 the allegations or does not contest the relief sought, the
25 petitioner is not required to produce evidence and prove the
26 allegations and the court may directly address the issues of the
27 relief requested.

28 (b) The court may modify the terms of a personal safety

1 protection order at any time upon subsequent motion filed by any
2 party.

3 **§62-10A-13. Mandatory provisions in personal safety protection**
4 **orders.**

5 A personal safety protection order shall order the respondent
6 to refrain from any direct or indirect contact with the petitioner
7 or engaging in other conduct that would place the petitioner in
8 reasonable fear of bodily injury.

9 **§62-10A-14. Permissive provisions in personal safety protection**
10 **order.**

11 The terms of a personal safety protection order may:

12 (1) Order the respondent to refrain from contacting
13 attempting to contact, the petitioner by any means including
14 through third parties regardless of whether those third parties
15 know of the order.

16 (2) Order the respondent to refrain from entering or remaining
17 present in the immediate environs of the petitioner's residence,
18 school, place of employment or other specified places at times when
19 the petitioner is present.

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

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

26 (B) The respondent has violated any prior order entered under
27 this article.

28 (4) Order other relief deemed necessary and appropriate by the

1 court.

2 **§62-10A-15. Provisions in personal safety protection order for**
3 **person witnessing a crime of violence against the**
4 **person.**

5 When the person to be protected is a person who reported or
6 was a witness to the crime of violence against the person, the
7 terms of the order may direct:

8 (1) The respondent to refrain from abusing, contacting,
9 telephoning, communicating, harassing, verbally abusing or
10 otherwise intimidating the person to be protected;

11 (2) The respondent to refrain from entering the school,
12 business or place of employment of the person to be protected for
13 the purpose of violating the personal safety protection order; and

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

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

18 (a) A personal safety protection order, entered by the circuit
19 court pursuant to this article, is effective for eighteen months.
20 Upon receipt of a written request for renewal from the petitioner
21 prior to the expiration of the original order, the circuit court
22 shall extend its order for another six months.

23 (b) The court may extend a protective order entered pursuant
24 to subsection (a) of this section for whatever period the court
25 considers necessary to protect the physical safety of the
26 petitioner or those persons for whom a petition may be filed as
27 provided in section five of this article, if the court finds by a
28 preponderance of evidence, after a hearing of which respondent has

1 been given notice, that:

2 (1) A material violation of the existing protective order has
3 occurred; or

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

8 (c) To be effective, a written request for extension must be
9 submitted to the court prior to the expiration of the original
10 order period. A notice of the extension shall be sent by the clerk
11 of the court to the respondent by first-class mail, addressed to
12 the last known address of the respondent as indicated by the court
13 file. The extension of time is effective upon mailing of the
14 notice.

15 (d) Certified copies of any order entered or extension notice
16 made under the provisions of this section shall be served upon the
17 respondent by first class mail, addressed to the last known address
18 of the respondent as indicated by the court file, and delivered to
19 the petitioner and any law-enforcement agency having jurisdiction
20 to enforce the order, including the city police, the county
21 sheriff's office or local office of the West Virginia State Police,
22 within twenty-four hours of the entry of the order.

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

25 (f) The clerk of the circuit court shall cause a copy of any
26 personal safety protection order entered by the circuit court
27 pursuant to the provisions of this article to be forwarded to the
28 magistrate or magistrate court clerk and the magistrate or

1 magistrate court clerk shall forward a copy of the protective order
2 to the appropriate state agencies for registration.

3 **§62-10A-17. Mutual personal safety protection orders prohibited.**

4 Mutual personal safety protection orders are prohibited unless
5 both parties have filed a petition under this article and have
6 proven the allegations contained therein by a preponderance of the
7 evidence. This does not prevent other persons, including the
8 respondent, from filing a separate petition. The court may
9 consolidate two or more petitions if he or she determines that
10 consolidation will further the interest of justice and judicial
11 economy. The court shall enter a separate order for each petition
12 filed.

13 **§62-10A-18. Appeals.**

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

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

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

21 **§62-10A-19. Purging of protection order files.**

22 Six months after the expiration of a final personal safety
23 protection order, the circuit court may, upon motion, order that
24 personal safety protection order and all references to the order be
25 purged from the files maintained by any law-enforcement agency and
26 may further order that the file maintained by the court be sealed
27 and not opened except upon order of the court when such is in the
28 interest of justice.

1 **§62-10A-20. Filing of orders with law-enforcement agency.**

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

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

16

17 **§62-10A-21. Service of pleadings and orders by law-enforcement**
18 **officers.**

19 Notwithstanding any other provision of this code to the
20 contrary, all law-enforcement officers are hereby authorized to
21 serve all pleadings and orders filed or entered pursuant to this
22 article on Sundays and legal holidays. No law-enforcement officer
23 may refuse to serve any pleadings or orders entered pursuant to
24 this article.

25 **§62-10A-22. Registry of protection orders.**

26 (a) A court which enters a personal safety protection order
27 pursuant to this article shall immediately register such order in
28 the domestic violence database established pursuant to the

1 provisions of section twenty-one, article one, chapter fifty-one of
2 this code. A protected individual who obtains a protection order
3 from a jurisdiction outside of this state pursuant to its law, or
4 his or her representative as provided in section five, article
5 twenty-eight of this chapter, may register that order with the West
6 Virginia Supreme Court of Appeals for entry in the domestic
7 violence database established pursuant to the provisions of section
8 twenty-one, article one, chapter fifty-one of this code.

9 (b) Failure to register an order as provided in this section
10 does not affect its enforceability in any county or jurisdiction.

11 **§62-10A-23. Limitation on use of information.**

12 Nothing in this article authorizes the inclusion of
13 information contained in a report of an incident of abuse in any
14 local, state, interstate, national or international systems of
15 criminal identification pursuant to section twenty-four, article
16 two, chapter fifteen of this code. Nothing in this section
17 prohibits the West Virginia State Police from processing
18 information through its criminal identification bureau with respect
19 to any actual charge or conviction of a crime.

20 **§62-10A-24. Civil contempt; violation of personal safety
21 protection orders; order to show cause.**

22 (a) Any party to a personal safety protection order or a legal
23 guardian or guardian ad litem may file a petition for civil
24 contempt alleging a violation of an order issued pursuant to the
25 provisions of this article. The petition shall be filed in the
26 magistrate court, if a magistrate court entered an order, or in the
27 circuit court, if a circuit court entered the order, in the county
28 in which the violation occurred or the county in which the order

1 was issued.

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

6 (c) Upon a finding of contempt, the court may order the
7 violator to comply with specific provisions of the personal safety
8 protection order and post a bond as surety for faithful compliance
9 with such order. The bond may not be a personal recognizance bond,
10 shall be in an amount that does not exceed the ability of the
11 violator to post and may not be waived by a fee waiver pursuant to
12 section one, article two, chapter fifty-nine of this code.

13 **§62-10A-25. Offenses for violation of personal safety protection**
14 **order, repeat offenses, penalties.**

15 (a) A respondent who knowingly and willfully violates the
16 terms of: (1) An emergency or final personal safety protection
17 order issued under the provisions of this article granting relief
18 pursuant to the provisions of this article; or (2) a condition of
19 bail, probation or parole which has the express intent or effect of
20 protecting the personal safety of a particular person or persons is
21 guilty of a misdemeanor and, upon conviction thereof, shall be
22 confined in jail for a period of not less than one day nor more
23 than one year, which jail term shall include actual confinement of
24 not less than twenty-four hours, and shall be fined not less than
25 \$250 nor more than \$2000.

26 (b) A respondent who is convicted of a third or subsequent
27 offense under subsection (a) of this section is guilty of a felony
28 and, upon conviction thereof, shall, in the discretion of the

1 court, be confined in a correctional facility not less than one nor
2 more than five years, or be confined in jail not exceeding twelve
3 months and fined not exceeding \$500.

4 **§62-10A-26. Arrest for violations of personal safety protection**
5 **orders.**

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

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

14 (2) The law-enforcement officer has received, from the victim
15 or a witness, a verbal or written allegation of the facts
16 constituting a violation of section nine hundred three of this
17 article; or

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

20 **§62-10A-27. Forms to be provided.**

21 The West Virginia Supreme Court of Appeals shall prescribe
22 forms which are necessary and convenient for proceedings pursuant
23 to this article and the court shall distribute such forms to the
24 clerk of the circuit court, the secretary-clerk of the circuit
25 court and the clerk of the magistrate court of each county within
26 the state.

27 **§62-10A-28. Immunity from liability for filing a report or**

1 **complaint or participating in a judicial**
2 **proceeding concerning alleged harassment or**
3 **stalking; rebuttable presumption of good faith.**

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

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