

**H. B. 3041**

(By Delegates Fleischauer, Longstreth, Caputo,  
Pino, Manchin, Mahan, Guthrie, Doyle,  
Brown, Poore and C. Miller)

[Introduced February 7, 2011; referred to the  
Committee on the Judiciary then Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §53-8-101, §53-8-201, §53-8-202, §53-8-203, §53-8-204, §53-8-205, §53-8-301, §53-8-302, §53-8-303, §53-8-304, §53-8-305, §53-8-306, §53-8-307, §53-8-308, §53-8-309, §53-8-310, §53-8-311, §53-8-401, §53-8-501, §53-8-502, §53-8-503, §53-8-504, §53-8-505, §53-8-506, §53-8-507, §53-8-508, §53-8-601, §53-8-701, §53-8-801, §53-8-802, §53-8-901, §53-8-902, §53-8-903, §53-8-904, §53-8-1001, §53-8-1101, §53-8-1102 and §53-8-1103; and to amend and reenact §62-1C-17c of said code, all relating to the protection of nonfamily or nonhousehold members from sexual offenses, stalking and harassment including criminal charges and penalties.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §53-8-101, §53-8-201, §53-8-202, §53-8-203, §53-8-204, §53-8-205, §53-8-301, §53-8-302, §53-8-303, §53-8-304, §53-8-305, §53-8-306, §53-8-307, §53-8-308,

1 §53-8-309, §53-8-310, §53-8-311, §53-8-401, §53-8-501, §53-8-502,  
2 §53-8-503, §53-8-504, §53-8-505, §53-8-506, §53-8-507, §53-8-508,  
3 §53-8-601, §53-8-701, §53-8-801, §53-8-802, §53-8-901, §53-8-902,  
4 §53-8-903, §53-8-904, §53-8-1001, §53-8-1101, §53-8-1102 and §53-8-  
5 1103; and that §62-1C-17c of said code be amended and reenacted,  
6 all to read as follows:

7 **CHAPTER 53. EXTRAORDINARY REMEDIES.**

8 **ARTICLE 8. PROTECTION OF NONFAMILY OR NONHOUSEHOLD MEMBERS FROM**  
9 **SEXUAL OFFENSES, STALKING AND HARASSMENT.**

10 **PART 1. GENERAL PROVISIONS.**

11 **§53-8-101. Findings and purposes.**

12 (a) The Legislature of this state finds that:

13 (1) It is the intent of the Legislature that the protection  
14 order created by this chapter be a remedy for victims who do not  
15 qualify for a domestic violence order of protection.

16 (2) Sexual offenses, stalking and harassment committed by  
17 nonfamily or nonhousehold members inflict humiliation, degradation,  
18 and terror on victims.

19 (3) Victims of offenses committed by persons who are nonfamily  
20 or nonhousehold members that do not report to law enforcement  
21 desire safety and protection from future interactions with the  
22 offender and should be able to seek a civil remedy requiring that  
23 the offender stay away from the victim.

24 (4) Victims of offenses committed by nonfamily or nonhousehold  
25 members desire safety and protection from future interactions with  
26 the offender and should be able to seek a civil remedy requiring

1 that the offender stay away from the victim during the criminal  
2 justice and judicial process.

3 (5) The Legislature of this state hereby finds that the  
4 issuance and enforcement of protection orders to victims of  
5 offenses committed by nonfamily or nonhousehold members are of  
6 paramount importance in the State of West Virginia because  
7 protection orders promote safety, reduce violence and prevent  
8 serious harm and death.

9 (b) This article shall be liberally construed and applied to  
10 promote the following purposes:

11 (1) To assure victims of sexual offenses, stalking, and  
12 harassment committed by nonfamily or nonhousehold members the  
13 maximum protection from abuse that the law can provide; and

14 (2) To recognize that sexual offenses, stalking and harassment  
15 committed by nonfamily or nonhousehold members constitute harmful  
16 behavior with potentially tragic results and that these offenses  
17 will no longer be excused or tolerated.

18 PART 2. DEFINITIONS.

19 **§53-8-201. Applicability of definitions.**

20 For the purposes of this article, the words or terms defined  
21 in this article, and any variation of those words or terms required  
22 by the context, have the meanings ascribed to them in this article.  
23 These definitions are applicable unless a different meaning clearly  
24 appears from the context.

25 **§53-8-202. Definitions**

26 (a) A sexual assault and stalking civil protection order under

1 this article is an emergency sexual assault and stalking civil  
2 protection order entered by a magistrate as a result of the  
3 emergency hearing or a sexual assault and stalking civil protection  
4 order entered by a circuit court judge upon final hearing that  
5 affords protection to persons who do not meet the definition of  
6 family or household member under section two hundred four, article  
7 twenty-seven, chapter forty-eight of this code.

8       (b) "Victim of a sexual offense" means any person who does not  
9 meet the definition of a family or household member as defined in  
10 section two hundred four, article twenty-seven, chapter forty-eight  
11 of this code and who has been subjected to, threatened with or  
12 placed in fear of any form of sexual offense as defined in section  
13 nine, article eight, chapter sixty-one of this code, section  
14 twelve, article eight, chapter sixty-one of this code, section two,  
15 article eight-a, chapter sixty-one of this code, section four,  
16 article eight-a, chapter sixty-one of this code, section five,  
17 article eight-a, chapter sixty-one of this code, section three,  
18 article eight-b, chapter sixty-one of this code, section four,  
19 article eight-b, chapter sixty-one of this code, section five,  
20 article eight-b, chapter sixty-one of this code, section six,  
21 article eight-b, chapter sixty-one of this code, section seven,  
22 article eight-b, chapter sixty-one of this code, section eight,  
23 article eight-b, chapter sixty-one of this code, section nine,  
24 article eight-b, chapter sixty-one of this code, section ten,  
25 article eight-b, chapter sixty-one of this code, section two,  
26 article six-c, chapter sixty-one of this code, section three,

1 article eight-c, chapter sixty-one of this code, section three-a,  
2 article eight-d, chapter sixty-one of this code, section five,  
3 article eight-d, chapter sixty-one of this code and section six,  
4 article eight-d, chapter sixty-one of this code.

5 (c) "Victim of stalking" means any person that does not meet  
6 the definition of a family or household member as defined in  
7 section two hundred four, article twenty-seven, chapter forty-  
8 eight of this code and who has been subjected to, threatened with  
9 or placed in fear of the offense of stalking, as defined in  
10 subsection a, section nine-a, article two, chapter sixty-one of  
11 this code.

12 (d) "Victim of harassment" means any person that does not meet  
13 the definition of a family or household member as defined in  
14 section two hundred four, article twenty-seven, chapter forty-eight  
15 of this code and who has been subjected to, threatened with or  
16 placed in fear of the offense of harassment, as defined in  
17 subsection a, section nine-a, article two, chapter sixty-one of  
18 this code.

19 (e) "Incapacitated adult" means any person who by reason of  
20 physical, mental or other infirmity is unable to physically carry  
21 on the daily activities of life necessary to sustaining life and  
22 reasonable health;

23 (f) "Nonphysical contact" includes, but is not limited to,  
24 telephone calls, mail, e-mail or other electronic communication,  
25 fax and written notes.

26 (1) "Electronic communication" means any transfer of signs,

1 signals, writings, images, sounds, data, intelligence or  
2 information of any nature transmitted, in whole or in part, by any  
3 device, system, or mechanism including, but not limited to, a wire,  
4 radio, computer, electromagnetic, photoelectric or photo-optical  
5 system.

6 (2) This section does not apply to words or conduct protected  
7 by the Constitution of the State of West Virginia or of the United  
8 States, a law-enforcement officer, a process server performing  
9 official duties or a licensed private investigator performing  
10 contracted services.

11 (g) "Law enforcement officer" means any duly authorized member  
12 of a law-enforcement agency who is authorized to maintain public  
13 peace and order, prevent and detect crime, make arrests and enforce  
14 the laws of the state or any county or municipality thereof, other  
15 than parking ordinances, and includes, but is not limited to, those  
16 persons employed as member of the State Police, a county sheriff  
17 and his or her law-enforcement deputies, a police officer of a  
18 department in any municipality as defined in section two, article  
19 one, chapter eight of this code, a natural resources police officer  
20 as defined in section one, article seven, chapter twenty of this  
21 code and campus police officers at state institutions of higher  
22 education in accordance with the provisions of section five,  
23 article four, chapter eighteen-b of this code. The term also  
24 includes persons employed as rangers by the Hatfield-McCoy Regional  
25 Recreation Authority in accordance with the provisions of section  
26 six, article fourteen, chapter twenty of this code, although the

1 authority is not a law-enforcement agency. As used in this  
2 article, the term "law-enforcement officer" does not apply to a  
3 watchman or special natural resources police officer.

4 **§53-8-203. Emergency hearing defined.**

5 "Emergency hearing" under this article means the hearing  
6 before a magistrate upon the filing of a petition for a sexual  
7 assault and stalking civil protection order. An emergency hearing  
8 may be held ex parte.

9 **§53-8-204. Final hearing defined.**

10 "Final hearing" under this article means the hearing before a  
11 circuit court judge following the entry of a sexual assault and  
12 stalking civil protection order by a magistrate as a result of the  
13 emergency hearing.

14 **§53-8-205. Law-enforcement agency defined.**

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

22 PART 3. PROCEDURE.

23 **§53-8-301. Jurisdiction.**

24 Magistrate courts and circuit courts have jurisdiction over  
25 actions conducted pursuant to this article.

26 **§53-8-302. Venue.**

1       The action may be heard in the county in which any act of  
2 sexual offense, stalking or harassment occurred, in the county in  
3 which the respondent is living or in the county in which the  
4 petitioner is living, either temporarily or permanently.

5 **§53-8-303. Commencement of proceeding.**

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

8       (b) No person shall be refused the right to file a petition  
9 under the provisions of this article. No person shall be denied  
10 relief under the provisions of this article if she or he presents  
11 facts sufficient under the provisions of this article for the  
12 relief sought.

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

14       (1) The respondent was voluntarily intoxicated;

15       (2) The petitioner acted in self-defense or defense of  
16 another; or

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

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

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

22       (2) Charges are filed; or

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

24       (e) If a petitioner is otherwise entitled to an order of  
25 protection, the length of time between the abusive incident and the  
26 petitioner's application for an order of protection is irrelevant.



1 (f) Nothing in this section prevents lawful assembly and  
2 petition for the lawful redress of grievances, including, but not  
3 limited to:

4 (1) Any labor or employment relations issue;

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

7 (3) Activities protected by the West Virginia Constitution or  
8 the United States Constitution or any statute of this state or the  
9 United States.

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

18 **§53-8-304. Persons who may file petition.**

19 A petition for a sexual assault and stalking civil protection  
20 order may be filed by:

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

23 (2) A person on behalf of a minor child or an incapacitated  
24 adult; or

25 (3) A person who reported or was a witness to the sexual  
26 offense, stalking or harassment and who, as a result, has been

1 abused, threatened, harassed or who has been the subject of other  
2 actions intended to intimidate the person.

3 **§53-8-305. Persons accompanying petitioner.**

4 No person accompanying a person who is seeking to file a  
5 petition under the provisions of this article is precluded from  
6 being present if his or her presence is desired by the person  
7 seeking a petition unless the person's behavior is disruptive to  
8 the proceeding.

9 **§53-8-306. Charges for fees and costs postponed.**

10 Regardless of whether a nondomestic violence protection order  
11 is issued, no filing fees, court costs, bond or other costs for  
12 services shall be assessed to the petitioner in an action commenced  
13 pursuant, provided by or associated with any proceedings under this  
14 article.

15 **§53-8-307. Priority of petitions.**

16 Any petition filed in magistrate court under the provisions of  
17 this article shall be given priority over any other civil action  
18 before the court, except actions in which trial is in progress, and  
19 shall be docketed immediately upon filing.

20 **§53-8-308. Full faith and credit.**

21 Any sexual assault and stalking civil protection order issued  
22 pursuant to this article is effective throughout the state in every  
23 county. Any other comparable protection order issued by any other  
24 state of the United States, the District of Columbia, Puerto Rico,  
25 the United States Virgin Islands or a territory or insular  
26 possession subject to the jurisdiction of the United States or an

1 Indian tribe or band that has jurisdiction to issue protection  
2 orders shall be accorded full faith and credit.

3 **§53-8-309. Service of process.**

4 (a) A sexual assault and stalking civil protection order may  
5 be served on the respondent by means of a Class I legal  
6 advertisement published notice, with the publication area being the  
7 county in which the respondent resides, published in accordance  
8 with the provisions of section two, article three, chapter fifty-  
9 nine of this code if:

10 (1) The petitioner files an affidavit with the court stating  
11 that an attempt at personal service pursuant to Rule 4 of the West  
12 Virginia Rules of Civil Procedure has been unsuccessful or evidence  
13 is adduced at the hearing for the sexual assault and stalking civil  
14 protection order that the respondent has left the State of West  
15 Virginia; and

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

19 (b) Any sexual assault and stalking civil protection order  
20 issued by the court of this state which is served in compliance  
21 with the provisions of Rule 4(f) of the West Virginia Rules of  
22 Civil Procedure served outside the boundaries of this state shall  
23 carry the same force and effect as if it had been personally served  
24 within this state's boundaries.

25 **§53-8-310. Confidentiality; identifying information; proceedings**  
26 **closed to public.**

1 (a) Proceedings pursuant to this article are not open to the  
2 public.

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

11 (c) All orders are public records.

12 (d) All other matters contained in the court file are subject  
13 to the same confidentiality requirements as set out in the rules of  
14 practice and procedure for circuit court.

15 **§53-8-311. Evidence presented in hearing.**

16 In any hearing under this article the court shall apply  
17 section eleven, article eight-b, chapter sixty-one of this code  
18 when determining the admissibility and relevance of evidence to be  
19 presented.

20 Copies of medical reports or records may be admitted into  
21 evidence to the same extent as though the original thereof. The  
22 custodian of such records shall not be required to be present to  
23 authenticate such records for any proceeding held pursuant to this  
24 subsection.

25 **PART 4: COORDINATION WITH PENDING COURT ACTIONS.**

26 **§53-8-401. Emergency sexual assault and stalking civil protection**

1                   **orders of court; hearings; persons present.**

2           (a) Upon the filing of a verified petition under this article,  
3 the magistrate court may enter an emergency sexual assault and  
4 stalking civil protection order as it may deem necessary to protect  
5 the petitioner and, upon good cause shown, may do so ex parte  
6 without the necessity of bond being given by the petitioner. Clear  
7 and convincing evidence of immediate and present danger of abuse to  
8 the petitioner constitutes good cause for the issuance of an  
9 emergency sexual assault and stalking civil protection order  
10 pursuant to this section. If the respondent is not present at the  
11 proceeding, the petitioner or the petitioner's legal representative  
12 shall certify to the court, in writing, the efforts which have been  
13 made to give notice to the respondent or just cause why notice  
14 should not be required.

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

1 any order entered shall also be delivered to any law-enforcement  
2 agency having jurisdiction to enforce the order, including, but not  
3 limited to, municipal police, the county sheriff's office and local  
4 office of the State Police, within twenty-four hours of the entry  
5 of the order. An emergency sexual assault and stalking civil  
6 protection order is effective until modified by order of the  
7 circuit court upon hearing as provided in subsection (d) of this  
8 section.

9       (c) Subsequent to the entry of the emergency sexual assault  
10 and stalking civil protection order, service on the respondent and  
11 the delivery to the petitioner and law-enforcement officers, the  
12 court file shall be transferred to the office of the clerk of the  
13 circuit court for use by the circuit court.

14       (d) The circuit court shall schedule a final hearing on each  
15 petition in which an emergency sexual assault and stalking civil  
16 protection order has been entered by a magistrate. The hearing  
17 shall be scheduled not later than thirty days following the entry  
18 of the order by the magistrate. The notice of the final hearing  
19 shall be served on the respondent and delivered to the petitioner,  
20 as provided in subsection (b) of this section and must set forth  
21 the hearing date, time and place and include a statement of the  
22 right of the parties to appear and participate in the final  
23 hearing. The notice must also provide that the petitioner's  
24 failure to appear may result in a dismissal of the petition and  
25 that the respondent's failure to appear may result in the entry of  
26 a sexual assault and stalking civil protection order against him or

1 her for a period of eighteen months. The notice must also include  
2 the name, mailing address, physical location and telephone number  
3 of the circuit court having jurisdiction over the proceedings. To  
4 facilitate the preparation of the notice of final hearing required  
5 by the provisions of this subsection, the circuit court must  
6 provide the magistrate court with a day and time in which final  
7 hearings or status conferences may be scheduled before the circuit  
8 court within the time required by law.

9       (e) Upon final hearing, the petitioner must prove, by a  
10 preponderance of the evidence, the allegation of a sexual offense,  
11 stalking, harassment or the making of credible threats or that he  
12 or she reported or witnessed a sexual offense, stalking harassment  
13 or the making of credible threats against another and has, as a  
14 result, been abused, threatened, harassed or has been the subject  
15 of other actions to attempt to intimidate him or her, or such  
16 petition shall be dismissed by the circuit court. If the respondent  
17 has not been served with notice of the emergency sexual assault and  
18 stalking civil protection order, the hearing may be continued to  
19 permit service to be effected. The failure to obtain service upon  
20 the respondent does not constitute a basis to dismiss the petition.

21       (f) No person requested by a party to be present during a  
22 hearing held under the provisions of this article shall be  
23 precluded from being present unless such person is to be a witness  
24 in the proceeding and a motion for sequestration has been made and  
25 such motion has been granted. A person found by the court to be  
26 disruptive may be precluded from being present.

1 (g) Upon hearing, the circuit court may dismiss the petition  
2 or enter a sexual assault and stalking civil protection order for  
3 a period of eighteen months. The hearing may be continued on motion  
4 of the respondent, at the convenience of the court. Otherwise, the  
5 hearing may be continued by the court no more than seven days. If  
6 a hearing is continued, the circuit court may modify the emergency  
7 sexual assault and stalking civil protection order as it deems  
8 necessary.

9 PART 5: SEXUAL ASSAULT AND STALKING CIVIL PROTECTION ORDER.

10 §53-8-501. Issuance of sexual assault and stalking civil  
11 protection order; modification of order.

12 (a) Upon final hearing, the court shall enter a sexual assault  
13 and stalking civil protection order if it finds, after hearing the  
14 evidence, that the petitioner has proved the allegations of a  
15 sexual offense, stalking, harassment or the making of credible  
16 threats by a preponderance of the evidence. If the respondent is  
17 present at the hearing and elects not to contest the allegations of  
18 a sexual offense, stalking, harassment or the making of credible  
19 threats or does not contest the relief sought, the petitioner is  
20 not required to produce evidence and prove the allegations of a  
21 sexual offense, stalking, harassment or the making of credible  
22 threats and the court may directly address the issues of the relief  
23 requested.

24 (b) The court may modify the terms of a sexual assault and  
25 stalking civil protection order at any time upon subsequent  
26 petition filed by any party.



1 **§53-8-502. Mandatory provisions in sexual assault and stalking**  
2 **civil protection order.**

3 A sexual assault and stalking civil protection order must  
4 order the respondent to refrain from abusing, harassing, stalking,  
5 threatening or otherwise intimidating the petitioner or engaging in  
6 other conduct that would place the petitioner in reasonable fear of  
7 bodily injury.

8 **§53-8-503. Permissive provisions in sexual assault and stalking**  
9 **civil protection order.**

10 The terms of a sexual assault and stalking civil protection  
11 order may:

12 (1) Order the respondent not to visit, assault, molest, or  
13 otherwise interfere with the petitioner.

14 (2) Order the respondent to cease contacting or following the  
15 petitioner including at the petitioner's workplace, school or  
16 residence.

17 (3) Order the respondent to refrain from contacting or  
18 attempting to contact, including by means of nonphysical contact,  
19 the petitioner directly, indirectly, or through third parties  
20 regardless of whether those third parties know of the order. This  
21 includes, but is not limited to;

22 (A) Repeatedly making telephone calls, or inducing a victim  
23 to make telephone calls to the actor, whether or not conversation  
24 ensues;

25 (B) Making or causing the telephone of another repeatedly or  
26 continuously to ring; or

1       (C) Contacting or attempting to contact the petitioner by  
2 telephone, written communication, or electronic means.

3       (4) Order the respondent to refrain from entering or remaining  
4 present in the immediate environs of the petitioner's residence,  
5 school, place of employment or other specified places at times when  
6 the petitioner is present.

7       (5) When issuing a protection order and providing relief in  
8 cases where the petitioner and the respondent are under the age of  
9 eighteen and attend the same public or private elementary, middle  
10 or high school, the court shall consider, among the other facts of  
11 the case, the severity of the act, any continuing physical danger  
12 or emotional distress to the petitioner and the expense difficulty  
13 and educational disruption that would be caused by a transfer of  
14 the respondent to another school. The court may order that the  
15 person restrained in the order not attend the public or approved  
16 private elementary, middle or high school attended by the person  
17 under the age of eighteen protected by the order. In the event the  
18 court orders a transfer of the restrained person to another school,  
19 the parents or legal guardians of the person restrained in the  
20 order are responsible for transportation and other costs associated  
21 with the change of school by the person restrained in the order.  
22 The court shall send notice of the restriction on attending the  
23 same school as the person protected by the order to the public or  
24 approved private school the person restrained by the order will  
25 attend and to the school the person protected by the order attends.

26       (6) The court, in its discretion, may prohibit a respondent

1 from possessing a firearm as defined in section seven, article  
2 seven, chapter sixty-one of this code if:

3 (A) A weapon was used or threatened to be used in the  
4 commission of the offense predicated the petitioning for the  
5 sexual assault and stalking civil protection order; or

6 (B) The respondent has violated any prior order as specified  
7 under this article.

8 (7) Order other relief deemed necessary and appropriate by the  
9 court.

10 **§53-8-504. Provisions in sexual assault and stalking civil**  
11 **protection order for person witnessing or reporting**  
12 **a sexual offense, stalking or harassment.**

13 When the person to be protected is a person who reported or  
14 was a witness to the sexual offense, stalking or harassment, the  
15 terms of a sexual assault and stalking civil protection order may  
16 order:

17 (1) The respondent to refrain from abusing, contacting,  
18 telephoning, communicating, harassing, verbally abusing or  
19 otherwise intimidating the person to be protected;

20 (2) The respondent to refrain from entering the school,  
21 business or place of employment of the person to be protected for  
22 the purpose of violating the sexual assault and stalking civil  
23 protection order; and

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

26 **§53-8-505. Time period a protective order is in effect; extension**

1                   of order; notice of order or extension.

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

7           (b) The court may extend a protective order entered pursuant  
8 to subsection (a) of this section for whatever period the court  
9 considers necessary to protect the physical safety of the  
10 petitioner or those persons for whom a petition may be filed as  
11 provided in subdivision (2), section three hundred four of this  
12 article, if the court finds by a preponderance of evidence, after  
13 a hearing of which respondent has been given notice, that:

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

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

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

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

9       (e) The circuit court may modify the terms of a sexual assault  
10 and stalking civil protection order upon motion of either party.

11       (f) The clerk of the circuit court shall cause a copy of any  
12 sexual assault and stalking civil protection order entered by the  
13 circuit court pursuant to the provisions of this article to be  
14 forwarded to the magistrate or magistrate court clerk and the  
15 magistrate or magistrate court clerk shall forward a copy of the  
16 protective order to the appropriate state agencies for  
17 registration.

18 **§53-8-506. Mutual sexual assault and stalking civil protection**  
19 **orders prohibited.**

20       Mutual sexual assault and stalking civil protection orders are  
21 prohibited unless both parties have filed a petition under this  
22 article and have proven the allegations of a sexual offense,  
23 stalking or harassment by a preponderance of the evidence. This  
24 does not prevent other persons, including the respondent, from  
25 filing a separate petition. The court may consolidate two or more  
26 petitions if he or she determines that consolidation will further

1 the interest of justice and judicial economy. The court shall enter  
2 a separate order for each petition filed.

3 **§53-8-507. Appeals.**

4 (a) A petitioner who has been denied an emergency sexual  
5 assault and stalking civil protection order, may file a petition  
6 for appeal of the denial, within five days of the denial, to the  
7 circuit court.

8 (b) Any party who alleges that he or she will be adversely  
9 affected or aggrieved by a final protective order may file a  
10 petition for appeal within ten days of the entry of the order by  
11 the circuit court. Any party who alleges that he or she will be  
12 adversely affected or aggrieved by the denial or dismissal of a  
13 petition for a sexual assault and stalking civil protection order,  
14 may file a petition for appeal within ten days of denial or  
15 dismissal of a petition by the magistrate court. The order shall  
16 remain in effect pending an appeal unless stayed by order of the  
17 circuit court sua sponte, upon motion of a party or by order of the  
18 circuit court upon motion of a party. No bond shall be required for  
19 an appeal under this section.

20 (c) Any party who alleges that he or she will be adversely  
21 affected or aggrieved by the denial or dismissal of a petition for  
22 a sexual assault and stalking civil protection order, may file a  
23 petition for appeal within ten days of denial or dismissal of a  
24 petition by the magistrate court.

25 (d) A petition for appeal filed pursuant to this section shall  
26 be heard by the court within ten days from the filing of the

1 petition.

2 (e) The standard of review of findings of fact made by the  
3 circuit court is clearly erroneous and the standard of review of  
4 application of the law to the facts is an abuse of discretion  
5 standard.

6 **§53-8-508. Purging of protection order files.**

7 Two years after the entry of a final sexual assault and  
8 stalking civil protection order, the circuit court may, upon  
9 motion, order that the sexual assault and stalking civil protection  
10 order and references to the order be purged from the file  
11 maintained by any law-enforcement agency and may further order that  
12 the file maintained by the court be sealed and not opened except  
13 upon order of the court when such is in the interest of justice.

14 **PART 6. DISPOSITION OF CIVIL PROTECTION ORDERS.**

15 **§53-8-601. Filing of orders with law-enforcement agency.**

16 (a) Upon entry of any order pursuant to this article and  
17 granting relief provided for by this article, a copy of the order  
18 shall, no later than the close of the next business day, be  
19 transmitted by the court or the clerk of the court to a local  
20 office of the municipal police, the county sheriff, the West  
21 Virginia State Police and any other appropriate law-enforcement  
22 agency where it shall be placed in a confidential file with access  
23 provided only to the law-enforcement agency, the petitioner and the  
24 respondent named on the order.

25 (b) Orders shall be promptly served upon the respondent.  
26 Failure to serve a sexual assault and stalking civil protection

1 order on the respondent does not stay the effect of a valid order  
2 if the respondent has actual notice of the existence and contents  
3 of the order.

4 (c) Any law-enforcement agency in this state in possession of  
5 or with notice of the existence of an order issued pursuant to the  
6 provisions of this article which is in effect or has been expired  
7 for thirty days or less that receives a report indicating a person  
8 protected by such an order has been reported to be missing shall  
9 immediately follow its procedures for investigating missing  
10 persons. No agency or department policy delaying the beginning of  
11 an investigation shall have any force or effect.

12 PART 7. LAW ENFORCEMENT RESPONSE.

13 **§53-8-701. Service of pleadings and orders by law-enforcement**  
14 **officers.**

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

21 PART 8: RECORD KEEPING.

22 **§53-8-801. Registry of sexual assault and stalking civil**  
23 **protection order.**

24 (a) A court which enters a sexual assault and stalking civil  
25 protection order pursuant to this article shall immediately  
26 register such order in the domestic violence database established



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

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

12 **§53-8-802. Limitation on use of information.**

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

21 **PART 9. SANCTIONS.**

22 **§53-8-901. Civil contempt; violation of sexual assault and**  
23 **stalking civil protection orders; order to show**  
24 **cause.**

25 (a) Any party to a sexual assault and stalking civil  
26 protection order or a legal guardian or guardian ad litem may file

1 a petition for civil contempt alleging a violation of an order  
2 issued pursuant to the provisions of this article. The petition  
3 shall be filed in the magistrate court, if a magistrate court  
4 entered an order, or in the circuit court, if a circuit court  
5 entered the order, in the county in which the violation occurred or  
6 the county in which the order was issued.

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

11 (c) Upon a finding of contempt, the court may order the  
12 violator to comply with specific provisions of the sexual assault  
13 and stalking civil protection order and post a bond as surety for  
14 faithful compliance with such order. The bond may not be a  
15 personal recognizance bond, shall be in an amount that does not  
16 exceed the ability of the violator to post and may not be waived by  
17 a fee waiver pursuant to section one, article two, chapter fifty-  
18 nine of this code.

19 **§53-8-902. Criminal contempt.**

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

1 the county in which the order was issued.

2 (b) Upon a verified petition for contempt, notice of hearing  
3 and hearing, if the petition alleges criminal contempt or the court  
4 informs the parties that the matter will be treated and tried as a  
5 criminal contempt, the matter shall be tried in the circuit court  
6 before a jury unless the party charged with contempt shall  
7 knowingly and intelligently waive the right to a jury trial with  
8 the consent of the court and the other party. If the jury, or the  
9 circuit court sitting without a jury, finds the defendant in  
10 contempt for willfully failing to comply with an order of the court  
11 made pursuant to the provisions of this article, as charged in the  
12 petition, the court may find the person to be in criminal contempt  
13 and may commit such person to a jail for a determinate period not  
14 to exceed six months.

15 (c) At any time during a contempt preceding the court may  
16 enter an order to attach forthwith the body of, and take into  
17 custody, any person who refuses or fails to respond to the lawful  
18 process of the court or to comply with an order of the court. Such  
19 order of attachment shall require the person to be brought  
20 forthwith before the court or the judge thereof in any county in  
21 which the court may then be sitting.

22 **§53-8-903. Violations of sexual assault and stalking civil**  
23 **protection orders; criminal complaints.**

24 (a) In addition to any other remedies, the petitioner may file  
25 a criminal complaint to the magistrate court when a respondent  
26 abuses the petitioner or is physically present at any location or

1 continues to contact, threaten or harass the petitioner, by phone,  
2 voice mail, e-mail or other means, even if the respondent is not  
3 physically present with the petitioner at the time of the threats  
4 or harassment and this conduct is:

5 (1) In knowing and willful violation of the terms of an  
6 emergency or final sexual assault and stalking civil protection  
7 order under the provisions of this article; or

8 (2) In knowing and willful violation of the terms of a  
9 protection order from another jurisdiction.

10 (b) If the magistrate court finds probable cause upon the  
11 complaint, the court shall issue a warrant for arrest of the person  
12 charged.

13 **§53-8-904. Offenses for violation of sexual assault and stalking**  
14 **civil protection order, repeat offenses, penalties.**

15 (a) A respondent who abuses the petitioner or who is  
16 physically present at any location or continues to stalk, contact,  
17 threaten or harass the petitioner, by phone, voice mail, e-mail or  
18 other means, even if the respondent is not physically present with  
19 the petitioner at the time of the threats or harassment in knowing  
20 and willful violation of the terms of: (1) An emergency or final  
21 sexual assault and stalking civil protection order issued under the  
22 provisions of this article granting relief pursuant to the  
23 provisions of this article; or (2) a condition of bail, probation  
24 or parole which has the express intent or effect of protecting the  
25 personal safety of a particular person or persons is guilty of a  
26 misdemeanor and, upon conviction thereof, shall be confined in jail

1 for a period of not less than one day nor more than one year, which  
2 jail term shall include actual confinement of not less than twenty-  
3 four hours, and shall be fined not less than \$250 nor more than  
4 \$2000.

5 (b) A respondent who is convicted of a third or subsequent  
6 offense under subsection (a) of this section is guilty of a felony  
7 and, upon conviction thereof, shall, in the discretion of the  
8 court, be confined in a correctional facility not less than one nor  
9 more than five years, or be confined in jail not exceeding twelve  
10 months and fined not exceeding \$500.

11 **§53-8-1001. Arrest for violations of sexual assault and stalking**  
12 **civil protection orders.**

13 (a) When a law-enforcement officer observes any respondent  
14 abuse the petitioner or the respondent's physical presence at any  
15 location in knowing and willful violation of the terms of an  
16 emergency or final sexual assault and stalking civil protection  
17 order issued under the provisions of this article, he or she shall  
18 immediately arrest the respondent if:

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

21 (2) The law-enforcement officer has received, from the victim  
22 or a witness, a verbal or written allegation of the facts  
23 constituting a violation of section nine hundred three of this  
24 article; or

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

1       (b) Any person who observes a violation of a sexual assault  
2 and stalking civil protection order as described in this section,  
3 or the victim of such abuse or unlawful presence, may call a local  
4 law-enforcement agency which shall verify the existence of a  
5 current order and shall direct a law-enforcement officer to  
6 promptly investigate the alleged violation.

7                   PART 11. MISCELLANEOUS PROVISIONS.

8 **§53-8-1101. Forms to be provided.**

9       The West Virginia Supreme Court of Appeals shall prescribe  
10 forms which are necessary and convenient for proceedings pursuant  
11 to this article and the court shall distribute such forms to the  
12 clerk of the circuit court, the secretary-clerk of the circuit  
13 court and the clerk of the magistrate court of each county within  
14 the state.

15 **§53-8-1102. Prohibition against employer retaliation.**

16       (a) An employer shall not discharge, discipline, threaten,  
17 otherwise discriminate against or penalize an employee regarding  
18 the employee's compensation, terms, conditions, location, or  
19 privileges of employment, because the employee took reasonable time  
20 off from work to obtain or attempt to obtain relief under this  
21 section. Except in cases of imminent danger to the health or  
22 safety of the employee or the employee's child, or unless  
23 impracticable, an employee who is absent from the workplace shall  
24 give advance notice to the employer. Upon request of the employer,  
25 the employee shall provide verification that supports the  
26 employee's reason for being absent from the workplace. All

1 information related to the employee's leave pursuant to this  
2 section shall be kept confidential by the employer.

3 (b) In addition to any remedies otherwise provided by law, an  
4 employee injured by a violation of subsection (a) of this section,  
5 may bring a civil action for recovery of damages, together with  
6 costs and disbursements, including reasonable attorneys' fees, and  
7 may receive such injunctive and other equitable relief, including  
8 reinstatement, as determined by the court.

9 **§53-8-1103. Immunity from liability for filing a report or**  
10 **complaint or participating in a judicial**  
11 **proceeding concerning alleged harassment or**  
12 **stalking; rebuttable presumption of good faith.**

13 A person who reports an alleged sexual offense, harassment,  
14 stalking or making of a credible threat, files a criminal  
15 complaint, files a complaint for a restraining order or who  
16 participates in a judicial proceeding pursuant to this article and  
17 who is acting in good faith is immune from criminal and civil  
18 liability that might otherwise result from these actions. A  
19 rebuttable presumption exists that the person was acting in good  
20 faith.

21 **CHAPTER 62. CRIMINAL PROCEDURE.**

22 **ARTICLE 1C. BAIL.**

23 **§62-1C-17c. Bail in cases of crimes between family or household**  
24 **members or victims of a sexual offense, stalking or**  
25 **harassment.**

26 (a) When the offense charged is a crime against a family or

1 household member or against a person that does not qualify as a  
2 family or household member as defined in section two hundred four,  
3 article twenty-seven, chapter forty-eight of this code and who has  
4 been subjected to, threatened with or placed in fear of any form of  
5 sexual offense as defined in section three, article six-b, chapter  
6 sixty-one of this code, section four, article eight-b, chapter  
7 sixty-one of this code, section five, article eight-b, chapter  
8 sixty-one of this code, section six, article eight-b, chapter  
9 sixty-one of this code, section seven, article eight-b, chapter  
10 sixty-one of this code, section eight, article eight-b, chapter  
11 sixty-one of this code, section nine, article eight-b, chapter  
12 sixty-one of this code, section ten, article eight-b, chapter  
13 sixty-one of this code, section nine, article eight, chapter sixty-  
14 one of this code, section twelve, article eight, chapter sixty-one  
15 of this code, section two, article eight-a, chapter sixty-one of  
16 this code, section four, article eight-a, chapter sixty-one of this  
17 code, section five, article eight-a, chapter sixty-one of this  
18 code, section two, article 8-c, chapter sixty-one of this code,  
19 section three, article eight-c, chapter sixty-one of this code,  
20 section three-a, article eight-d, chapter sixty-one of this code,  
21 section five, article eight-d, chapter sixty-one of this code and  
22 section six, article eight-d, chapter sixty-one of this code or  
23 against a person that does not qualify as a family or household  
24 member as defined in section two hundred four, article twenty-  
25 seven, chapter forty-eight of this code and who has been subjected  
26 to, threatened with or placed in fear of the offense of stalking,



1 as defined in subsection a, section nine-a, article two, chapter  
2 sixty-one of this code or against a person that does not qualify as  
3 a family or household member as defined in section two hundred  
4 four, article twenty-seven, chapter forty-eight of this code and  
5 who has been subjected to, threatened with, or placed in fear of  
6 the offense of harassment, as defined in subsection b, section  
7 nine-a, article two, chapter sixty-one of this code, it may be a  
8 condition of bond that the defendant shall not have any contact  
9 whatsoever, direct or indirect, verbal or physical, with the victim  
10 or complainant.

11 (b) In determining conditions of release, the issuing  
12 authority shall consider whether the defendant poses a threat or  
13 danger to the victim or other family or household member. If the  
14 issuing authority makes such a determination, it shall require as  
15 a condition of bail that the defendant refrain from entering the  
16 residence or household of the victim, the victim's school and the  
17 victim's place of employment or otherwise contacting the victim  
18 ~~and/or~~ or minor child or household member in any manner whatsoever,  
19 and ~~shall~~ refrain from having any further contact with the victim.  
20 A violation of this condition may be punishable by the forfeiture  
21 of bail and the issuance of a bench warrant for the defendant's  
22 arrest or remanding the defendant to custody or a modification of  
23 the terms of bail.

24 (c) The clerk of the court issuing an order pursuant to this  
25 section shall issue certified copies of the conditions of bail to  
26 the victim upon request without cost.

1 (d) Where a law-enforcement officer observes any violation of  
2 bail condition, including the presence of the defendant or at the  
3 home of the victim, the officer shall immediately arrest the  
4 defendant and detain the defendant pending a hearing for revocation  
5 of bail.

NOTE: The purpose of this bill is to protect nonfamily or nonhousehold members from sexual offenses, stalking and harassment including criminal charges and penalties.

§53-8-101, et seq., is a new article; therefore, it has been completely underscored.

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