

Senate Bill No. 444

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

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

11 A BILL to amend the Code of West Virginia, 1931, as amended, by
12 adding thereto a new article, designated §53-8-101, §53-8-201,
13 §53-8-202, §53-8-203, §53-8-204, §53-8-205, §53-8-301, §53-8-
14 302, §53-8-303, §53-8-304, §53-8-305, §53-8-306, §53-8-307,
15 §53-8-308, §53-8-309, §53-8-310, §53-8-311, §53-8-401, §53-8-
16 501, §53-8-502, §53-8-503, §53-8-504, §53-8-505, §53-8-506,
17 §53-8-507, §53-8-508, §53-8-601, §53-8-701, §53-8-801, §53-8-
18 802, §53-8-901, §53-8-902, §53-8-903, §53-8-904, §53-8-1001,
19 §53-8-1101, §53-8-1102 and §53-8-1103; and to amend and
20 reenact §62-1C-17c of said code, all relating to the
21 protection of nonfamily or nonhousehold members from sexual
22 offenses, stalking and harassment; and criminal charges and
23 penalties.

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

25 That the Code of West Virginia, 1931, as amended, be amended
26 by adding thereto a new article, designated §53-8-101, §53-8-201,

1 §53-8-202, §53-8-203, §53-8-204, §53-8-205, §53-8-301, §53-8-302,
2 §53-8-303, §53-8-304, §53-8-305, §53-8-306, §53-8-307, §53-8-308,
3 §53-8-309, §53-8-310, §53-8-311, §53-8-401, §53-8-501, §53-8-502,
4 §53-8-503, §53-8-504, §53-8-505, §53-8-506, §53-8-507, §53-8-508,
5 §53-8-601, §53-8-701, §53-8-801, §53-8-802, §53-8-901, §53-8-902,
6 §53-8-903, §53-8-904, §53-8-1001, §53-8-1101, §53-8-1102 and §53-8-
7 1103; and that §62-1C-17c of said code be amended and reenacted,
8 all to read as follows:

9 **CHAPTER 53. EXTRAORDINARY REMEDIES.**

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

12 PART 1. GENERAL PROVISIONS.

13 **§53-8-101. Findings and purposes.**

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

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

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

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

26 (4) Victims of offenses committed by nonfamily or nonhousehold

1 members desire safety and protection from future interactions with
2 the offender and should be able to seek a civil remedy requiring
3 that the offender stay away from the victim during the criminal
4 justice and judicial process.

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

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

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

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

20 PART 2. DEFINITIONS.

21 **§53-8-201. Applicability of definitions.**

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

1 **§53-8-202. Definitions**

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

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

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

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

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

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

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

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

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

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

1 six, article fourteen, chapter twenty of this code, although the
2 authority is not a law-enforcement agency. As used in this
3 article, the term "law-enforcement officer" does not apply to a
4 watchman or special natural resources police officer.

5 **§53-8-203. Emergency hearing defined.**

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

10 **§53-8-204. Final hearing defined.**

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

15 **§53-8-205. Law-enforcement agency defined.**

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

23 PART 3. PROCEDURE.

24 **§53-8-301. Jurisdiction.**

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

1 **§53-8-302. Venue.**

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

6 **§53-8-303. Commencement of proceeding.**

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

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

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

15 (1) The respondent was voluntarily intoxicated;

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

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

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

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

23 (2) Charges are filed; or

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

25 (e) If a petitioner is otherwise entitled to an order of
26 protection, the length of time between the abusive incident and the

1 petitioner's application for an order of protection is irrelevant.

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

5 (1) Any labor or employment relations issue;

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

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

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

19 **§53-8-304. Persons who may file petition.**

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

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

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

26 (3) A person who reported or was a witness to the sexual

1 offense, stalking or harassment and who, as a result, has been
2 abused, threatened, harassed or who has been the subject of other
3 actions intended to intimidate the person.

4 **§53-8-305. Persons accompanying petitioner.**

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

10 **§53-8-306. Charges for fees and costs postponed.**

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

16 **§53-8-307. Priority of petitions.**

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

21 **§53-8-308. Full faith and credit.**

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

1 possession subject to the jurisdiction of the United States or an
2 Indian tribe or band that has jurisdiction to issue protection
3 orders shall be accorded full faith and credit.

4 **§53-8-309. Service of process.**

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

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

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

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

26 **§53-8-310. Confidentiality; identifying information; proceedings**

1 **closed to public.**

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

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

12 (c) All orders are public records.

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

16 **§53-8-311. Evidence presented in hearing.**

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

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

26 PART 4: COORDINATION WITH PENDING COURT ACTIONS.

1 **§53-8-401. Emergency sexual assault and stalking civil protection**
2 **orders of court; hearings; persons present.**

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

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

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

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

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

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

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

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

1 disruptive may be precluded from being present.

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

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

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

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

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

1 petition filed by any party.

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

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

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

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

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

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

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

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

26 (B) Making or causing the telephone of another repeatedly or

1 continuously to ring; or

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

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

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

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

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

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

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

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

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

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

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

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

1 **§53-8-505. Time period a protective order is in effect; extension**
2 **of order; notice of order or extension.**

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

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

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

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

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

1 notice.

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

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

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

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

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

1 petitions if he or she determines that consolidation will further
2 the interest of justice and judicial economy. The court shall enter
3 a separate order for each petition filed.

4 **§53-8-507. Appeals.**

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

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

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

26 (d) A petition for appeal filed pursuant to this section shall

1 be heard by the court within ten days from the filing of the
2 petition.

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

7 **§53-8-508. Purging of protection order files.**

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

15 PART 6. DISPOSITION OF CIVIL PROTECTION ORDERS.

16 **§53-8-601. Filing of orders with law-enforcement agency.**

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

26 (b) Orders shall be promptly served upon the respondent.

1 Failure to serve a sexual assault and stalking civil protection
2 order on the respondent does not stay the effect of a valid order
3 if the respondent has actual notice of the existence and contents
4 of the order.

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

13 PART 7. LAW ENFORCEMENT RESPONSE.

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

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

22 PART 8: RECORD KEEPING.

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

25 (a) A court which enters a sexual assault and stalking civil
26 protection order pursuant to this article shall immediately

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

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

13 **§53-8-802. Limitation on use of information.**

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

22 **PART 9. SANCTIONS.**

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

26 (a) Any party to a sexual assault and stalking civil

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

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

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

20 **§53-8-902. Criminal contempt.**

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

1 entered the order, in the county in which the violation occurred or
2 the county in which the order was issued.

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

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

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

25 (a) In addition to any other remedies, the petitioner may file
26 a criminal complaint to the magistrate court when a respondent

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

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

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

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

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

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

1 misdemeanor and, upon conviction thereof, shall be confined in jail
2 for a period of not less than one day nor more than one year, which
3 jail term shall include actual confinement of not less than twenty-
4 four hours, and shall be fined not less than \$250 nor more than
5 \$2000.

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

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

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

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

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

26 (3) The law-enforcement officer has observed credible evidence

1 that the accused committed the offense.

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

8 PART 11. MISCELLANEOUS PROVISIONS.

9 **§53-8-1101. Forms to be provided.**

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

16 **§53-8-1102. Prohibition against employer retaliation.**

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

1 employee's reason for being absent from the workplace. All
2 information related to the employee's leave pursuant to this
3 section shall be kept confidential by the employer.

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

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

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

22 **CHAPTER 62. CRIMINAL PROCEDURE.**

23 **ARTICLE 1C. BAIL.**

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

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

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

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

25 (c) The clerk of the court issuing an order pursuant to this
26 section shall issue certified copies of the conditions of bail to

1 the victim upon request without cost.

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

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