

H. B. 4084

(By Delegates Frazier, Miley, Barker, Manypenny,
and Michael)

[Introduced January 16, 2012; referred to the
Committee on the Judiciary.]

**Interim
Bill**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §53-8-1, §53-8-2, §53-8-3, §53-8-4, §53-8-5, §53-8-6, §53-8-7, §53-8-8, §53-8-9, §53-8-10, §53-8-11, §53-8-12, §53-8-13, §53-8-14, §53-8-15, §53-8-16, §53-8-17 and §53-8-18, all relating to personal safety orders; confidentiality of proceedings; who may file a petition; contents of petition; temporary hearing and relief available; contents of temporary order; respondent's opportunity to be heard; notice to respondent; final hearing and forms of relief; modification and rescission; appeals; criminal penalties; priority of petitions; fees and costs; service by law enforcement; rules and forms; limitation on use of information; immunity from liability; and the sealing of records.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended

1 by adding thereto a new article, designated §53-8-1, §53-8-2, §53-
2 8-3, §53-8-4, §53-8-5, §53-8-6, §53-8-7, §53-8-8, §53-8-9, §53-8-
3 10, §53-8-11, §53-8-12, §53-8-13, §53-8-14, §53-8-15, §53-8-16,
4 §53-8-17 and §53-8-18, all to read as follows:

5 **ARTICLE 8. PERSONAL SAFETY ORDERS.**

6 **§53-8-1. Definitions.**

7 In this article the following words have the meanings
8 indicated.

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

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

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

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

23 (5) Place of employment. - - "Place of employment" includes
24 the grounds, parking areas, outbuildings and common or public areas

1 in or surrounding the place of employment.

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

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

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

20 (9) Sexual offense. - - "Sexual offense" means the commission
21 of any of the following sections:

22 (A) Section nine, article eight, chapter sixty-one of this
23 code;

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

1 code;

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

3 code;

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

5 code;

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

7 code;

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

9 code;

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

11 code;

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

13 code;

14 (I) Section six, article eight-b, chapter sixty-one of this

15 code;

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

17 code;

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

19 code;

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

21 code;

22 (M) Section ten, article eight-b, chapter sixty-one of this

23 code;

24 (N) Section two, article six-c, chapter sixty-one of this

1 code;

2 (O) Section three, article eight-c, chapter sixty-one of this

3 code;

4 (P) Section three-a, article eight-d, chapter sixty-one of

5 this code;

6 (Q) Section five, article eight-d, chapter sixty-one of this

7 code and

8 (R) Section six, article eight-d, chapter sixty-one of this

9 code.

10 (10) Temporary personal safety order. - - "Temporary personal

11 safety order" means a personal safety order issued by a magistrate

12 under section five of this article.

13 **§53-8-2. Confidentially of proceedings.**

14 (a) General Provisions. All orders, findings, pleadings,

15 recordings, exhibits, transcripts or other documents contained in

16 a court file are confidential and are not available for public

17 inspection: *Provided*, That unless the file is sealed pursuant to

18 section eighteen of this article or access is otherwise prohibited

19 by order, any document in the file shall be available for

20 inspection and copying by the parties, attorneys of record,

21 guardians ad litem, designees authorized by a party in writing and

22 law enforcement. A magistrate or circuit judge may open and inspect

23 the entire contents of the court file in any case pending before

24 the magistrate's or judge's court. When sensitive information has

1 been disclosed in a hearing, pleading or document filing, the court
2 may order such information sealed in the court file. Sealed court
3 files shall be opened only pursuant to section eighteen of this
4 article.

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

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

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

22 (d) Obtaining confidential records. Unless both the petitioner
23 and the respondent waive confidentiality in writing, records
24 contained in the court file may not be obtained by subpoena but

1 only by court order and upon full compliance with statutory and
2 case law requirements.

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

4 (a) Who may file a petition - A petition for relief under this
5 article may be filed by:

6 (1) A person seeking relief under this article for herself or
7 himself, or

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

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

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

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

21 **§53-8-4. Petition seeking relief.**

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

1 petitioner by the respondent:

2 (1) An act that causes serious bodily harm;

3 (2) An act that places the petitioner in fear of imminent
4 serious bodily harm;

5 (3) Battery;

6 (4) Assault;

7 (5) A sexual offense or attempted sexual offense;

8 (6) Kidnapping;

9 (7) Unlawful restraint;

10 (8) Stalking;

11 (9) Trespass; or

12 (10) Malicious destruction of property.

13 (b) Contents. --

14 (1) The petition shall:

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

19 (B) Subject to the provisions of subsection (c) of this
20 section, contain the address of the petitioner; and

21 (C) Include all information known to the petitioner of:

22 (I) The nature and extent of the act specified in subsection
23 (a) of this section for which the relief is being sought, including
24 information known to the petitioner concerning previous harm or

1 injury resulting from an act specified in subsection (a) of this
2 section by the respondent;

3 (ii) Each previous and pending action between the parties in
4 any court; and

5 (iii) The whereabouts of the respondent.

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

12 (d) Facts that may not be considered. -- It is not a defense
13 to a petition filed pursuant to this article 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 failed to act in self-defense or defense of
18 another.

19 (e) Providing false information. -- An individual who
20 knowingly provides false information in a petition filed under this
21 section is guilty of a misdemeanor and, upon conviction thereof,
22 shall be fined not less than \$50 nor more than \$1,000 or confined
23 in jail not more than ninety days, or both fined and confined.

24 (f) Withdrawal or dismissal of a petition prior to

1 adjudication operates as a dismissal without prejudice. No action
2 for a personal safety order may be dismissed because the respondent
3 is being prosecuted for a crime against the petitioner. For any
4 action commenced under this article, dismissal of a case or a
5 finding of not guilty, does not require dismissal of the action for
6 a civil protection order.

7 **§53-8-5. Temporary personal safety orders.**

8 (a) Authorized; forms of relief available. --

9 (1) If after a hearing on a petition, whether ex parte or
10 otherwise, a magistrate finds that there are reasonable grounds to
11 believe that the respondent has committed an act specified in
12 subsection (a), section four of this article, against the
13 petitioner, the magistrate shall issue a temporary personal safety
14 order to protect the petitioner.

15 (2) The temporary personal safety order may include any or all
16 of the following relief:

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

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

24 (C) Order the respondent to refrain from entering the

1 residence of the petitioner;

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

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

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

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

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

16 (iii) The respondent has been convicted of an offense
17 involving the use of a firearm.

18 (G) Direct the respondent to participate in professionally
19 supervised counseling or, if the parties are amenable, mediation;
20 and

21 (H) Order either party to pay filing fees and costs of a
22 proceeding pursuant to section thirteen of this article.

23 (3) If the magistrate issues an order under this section, the
24 order shall contain only the relief necessary to protect the

1 petitioner.

2 (b) Immediate. - The temporary personal safety order shall be
3 immediately served on the respondent by law enforcement, or at the
4 option of the petitioner, pursuant to rules promulgated pursuant to
5 section fifteen of this article.

6 (c) Length of effectiveness. --

7 (1) The temporary personal safety order shall be effective for
8 not more than thirty days after service of the order.

9 (2) The magistrate may extend the temporary personal safety
10 order as needed but not to exceed an additional thirty days and to
11 effectuate service of the order where necessary to provide
12 protection or for other good cause.

13 (d) Final personal safety order hearing. -- The magistrate may
14 proceed with a final personal safety order hearing instead of a
15 temporary personal safety order hearing if:

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

17 (B) The court otherwise has personal jurisdiction over the
18 respondent; and

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

21 **§53-8-6. Respondent's opportunity to be heard; notice to**
22 **respondent.**

23 (a) Respondent's opportunity to be heard. -- A respondent
24 shall have an opportunity to be heard on the question of whether

1 the magistrate should issue a final personal safety order.

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

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

5 (B) Unless continued for good cause, the final personal safety
6 order hearing shall be held no later than thirty days after the
7 temporary personal safety order is served on the respondent.

8 (2) The temporary personal safety order shall include notice
9 to the respondent:

10 (A) In at least ten-point bold type, that if the respondent
11 fails to appear at the final personal safety order hearing, the
12 respondent may be served by first-class mail at the respondent's
13 last known address with the final personal safety order and all
14 other notices concerning the final personal safety order;

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

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

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

22 **§53-8-7. Personal safety hearing; forms of relief.**

23 (a) Final personal safety order hearing -- Proceeding;
24 issuance of order. -- If the respondent appears for the final

1 personal safety order hearing, has been served with a temporary
2 personal safety order or the respondent waives personal service,
3 the magistrate:

4 (1) May proceed with the final personal safety order hearing;
5 and

6 (2) May issue a final personal safety order to protect the
7 petitioner if the court finds by a preponderance of the evidence
8 that:

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

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

14 (B) The respondent consents to the entry of a personal safety
15 order.

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

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

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

24 (2) Each party has a reasonable apprehension of continued

1 unwanted or unwelcome contacts by the other party.

2 (d) Personal safety order -- Forms of relief. --

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

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

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

12 (C) Order the respondent to refrain from entering the
13 residence of the petitioner;

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

16 (E) Order the respondent not to visit, assault, molest or
17 otherwise interfere with the petitioner and, if the petitioner is
18 a child, the petitioner's siblings and minors residing in the
19 household of the petitioner.

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

23 (I) A weapon was used or threatened to be used in the
24 commission of the offense predicated the petitioning for the

1 personal safety order;

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

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

6 (G) Direct the respondent to participate in professionally
7 supervised counseling or, if the parties are amenable, mediation;
8 and

9 (H) Order either party to pay filing fees and costs of a
10 proceeding pursuant to section thirteen of this article.

11 (2) If the magistrate issues an order under this section, the
12 order shall contain only the relief necessary to protect the
13 petitioner.

14 (e) Personal safety order -- Service. --

15 (1) A copy of the final personal safety order shall be served
16 on the petitioner, the respondent, the appropriate law-enforcement
17 agency and any other person the court determines is appropriate,
18 including a county board of education, in open court or, if the
19 person is not present at the final personal safety order hearing,
20 by first-class mail to the person's last known address or by other
21 means in the discretion of the court.

22 (2) (A) A copy of the final personal safety order served on
23 the respondent in accordance with subdivision (1) of this
24 subsection or the hearing the announcement of the court's ruling in

1 court, constitutes actual notice to the respondent of the contents
2 of the final personal safety order.

3 (B) Service is complete upon mailing.

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

7 **§53-8-8. Modification and rescission.**

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

10 (1) Giving notice to the petitioner and the respondent; and

11 (2) A hearing.

12 (b) For good cause shown, a magistrate may extend the term of
13 the personal safety order beyond the period specified in section
14 six of this article, after:

15 (1) Giving notice to the petitioner and the respondent; and

16 (2) A hearing.

17 **§53-8-9. Appeals.**

18 (a) If a magistrate grants or denies relief under a petition
19 filed under this article, a respondent or a petitioner may appeal
20 to the circuit court for the county where the magistrate court is
21 located.

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

24 (c) (1) If an appeal is filed under this section, the

1 magistrate court judgment shall remain in effect until superseded
2 by a judgment of the circuit court; and

3 (2) Unless the circuit court orders otherwise, modification or
4 enforcement of the magistrate court order shall be by the
5 magistrate court.

6 **§53-8-10. Statement concerning violations.**

7 (a) In general. -- A temporary personal safety order and final
8 personal safety order issued under this article shall state that a
9 violation of the order may result in:

10 (1) Criminal prosecution; and

11 (2) Imprisonment or fine or both.

12 (b) Temporary and final personal safety orders. -- A temporary
13 personal safety order and final personal safety order issued under
14 this article shall state that a violation of the order may result
15 in a finding of contempt.

16 **§53-8-11. Penalties.**

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

21 (1) For a first offense, be fined not more than \$1,000 or
22 confined in jail not more than ninety days or both fined and
23 confined; and

24 (2) For a second or subsequent offense, be fined not more than

1 \$2,500 or confined in jail not more than one year or both fined and
2 confined.

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

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

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

14 **§53-8-13. Fees and Costs.**

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

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

1 (c) Costs and fees may not be assessed against a prevailing
2 party.

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

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

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

20 **§53-8-14. Service by law enforcement.**

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

1 enforcement officer may refuse to serve any pleadings or orders
2 entered pursuant to this article. Law enforcement shall attempt to
3 serve all orders without delay: *Provided*, That service of process
4 shall be attempted within seventy-two hours of law enforcement's
5 receipt of the order. If service is not made, law enforcement
6 shall continue to attempt service on the respondent until proper
7 service is made.

8 **§53-8-15. Rules and forms.**

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

11 (b) Petition form. --

12 (1) The Supreme Court of Appeals shall adopt a form for a
13 petition under this article.

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

19 **§53-8-16. Limitation on use of information.**

20 Nothing in this article authorizes the inclusion of
21 information contained in petition, pleadings or orders provided for
22 by this article to be submitted to any local, state, interstate,
23 national or international systems of criminal identification
24 pursuant to section twenty-four, article two, chapter fifteen of

1 this code. Nothing in this section prohibits the West Virginia
2 State Police from processing information through its criminal
3 identification bureau with respect to any actual charge or
4 conviction of a crime.

5 **§53-8-17. Immunity from liability; rebuttable presumption of good**
6 **faith.**

7 A person who seeks relief pursuant to the article who is
8 acting in good faith is immune from criminal and civil liability
9 for those actions. There is a rebuttable presumption that the
10 person was acting in good faith.

11 **§53-8-18. Sealing of records.**

12 (a) Definitions. --

13 (1) In this section the following words have the meanings
14 indicated.

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

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

22 (4) "Sealing" means:

23 (A) With respect to a record kept in a courthouse, removing to
24 a separate secure area to which persons who do not have a

1 legitimate reason for access are denied access;

2 (B) With respect to electronic information about a proceeding
3 on the website maintained by the magistrate court, circuit court or
4 the Supreme Court of Appeals, removing the information from the
5 public website; and

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

9 (b) Written request. -- Either party to a petition filed
10 pursuant to this article may file a written request with the
11 circuit to seal all court records relating to the proceeding.

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

15 (d) Notice, hearing and findings. --

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

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

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

21 (A) Good cause to grant the request. In determining whether
22 there is good cause to grant the request to seal court records, the
23 court shall balance the privacy and potential danger of adverse
24 consequences to the parties against the potential risk of future

1 harm and danger to the petitioner and the community; and

2 (B) That none of the following are pending at the time of the
3 hearing:

4 (I) A temporary personal safety order or protective order
5 issued against the respondent in a proceeding between the
6 petitioner and the respondent; or

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

10 (e) Access to a sealed record. --

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

13 (A) A law-enforcement officer;

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

16 (C) A prosecuting attorney; or

17 (D) An employee of the Department of Health and Human
18 Resources.

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

22 (B) If the circuit court finds that the person has a
23 legitimate reason for access, the court may grant the person access
24 to the sealed record under the terms and conditions that the court

1 determines.

2 (C) In ruling on a motion under this subdivision, the court
3 shall balance the person's need for access to the record with the
4 respondent's right to privacy and the potential harm of unwarranted
5 adverse consequences to the respondent that the disclosure may
6 create.

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

NOTE: The purpose of this article is to create a statutory cause of action to obtain a "personal safety order" from a magistrate or circuit court judge and to set forth the perimeters including confidentiality of proceedings; who may file a petition; contents of petition; temporary hearing and relief available; contents of temporary order; respondent's opportunity to be heard; notice to respondent; final hearing and forms of relief; modification and rescission; appeals; criminal penalties; priority of petitions; fees and costs; service by law enforcement; rules and forms; limitation on use of information; immunity from liability; and the sealing of records.

This article is new; therefore, it has been completely underscored.