

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 191**

5 (By Senators Kessler (Mr. President), Stollings, Unger, Laird and
6 Jenkins)

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9 _____
[Originating in the Committee on the Judiciary;
10 reported February 2, 2012.]
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13 A BILL to amend the Code of West Virginia, 1931, as amended, by
14 adding thereto a new article, designated §53-8-1, §53-8-2,
15 §53-8-3, §53-8-4, §53-8-5, §53-8-6, §53-8-7, §53-8-8, §53-8-9,
16 §53-8-10, §53-8-11, §53-8-12, §53-8-13, §53-8-14, §53-8-15,
17 §53-8-16, §53-8-17 and §53-8-18, all relating to personal
18 safety orders; confidentiality of proceedings; who may file a
19 petition; contents of petition; temporary hearing and relief
20 available; contents of temporary order; respondent's
21 opportunity to be heard; notice to respondent; final hearing
22 and forms of relief; modification and rescission; appeals;
23 criminal penalties; priority of petitions; fees and costs;
24 service by law enforcement; rules and forms; limitation on use

1 of information; immunity from liability; and the sealing of
2 records.

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

4 That the Code of West Virginia, 1931, as amended, be amended
5 by adding thereto a new article, designated §53-8-1, §53-8-2, §53-
6 8-3, §53-8-4, §53-8-5, §53-8-6, §53-8-7, §53-8-8, §53-8-9, §53-8-
7 10, §53-8-11, §53-8-12, §53-8-13, §53-8-14, §53-8-15, §53-8-16,
8 §53-8-17 and §53-8-18, all to read as follows:

9 **ARTICLE 8. PERSONAL SAFETY ORDERS.**

10 **§53-8-1. Definitions.**

11 In this article the following words have the meanings
12 indicated.

13 (1) *Final personal safety order.* -- "Final personal safety
14 order" means a personal safety order issued by a magistrate under
15 section seven of this article.

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

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

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

3 (5) *Place of employment*. -- "Place of employment" includes the
4 grounds, parking areas, outbuildings and common or public areas in
5 or surrounding the place of employment.

6 (6) *Residence*. -- "Residence" includes the yard, grounds,
7 outbuildings and common or public areas in or surrounding the
8 residence.

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

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

24 (9) *Sexual offense*. -- "Sexual offense" means the commission

1 of any of the following sections:

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

4 (B) Section twelve, article eight, chapter sixty-one of this
5 code;

6 (C) Section two, article eight-a, chapter sixty-one of this
7 code;

8 (D) Section four, article eight-a, chapter sixty-one of this
9 code;

10 (E) Section five, article eight-a, chapter sixty-one of this
11 code;

12 (F) Section three, article eight-b, chapter sixty-one of this
13 code;

14 (G) Section four, article eight-b, chapter sixty-one of this
15 code;

16 (H) Section five, article eight-b, chapter sixty-one of this
17 code;

18 (I) Section seven, article eight-b, chapter sixty-one of this
19 code;

20 (J) Section eight, article eight-b, chapter sixty-one of this
21 code;

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

24 (L) Section two, article eight-c, chapter sixty-one of this

1 code;

2 (M) Section three, article eight-c, chapter sixty-one of this
3 code;

4 (N) Section three-a, article eight-d, chapter sixty-one of
5 this code;

6 (O) Section five, article eight-d, chapter sixty-one of this
7 code; and

8 (P) 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
15 an 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
23 petitioner and the respondent waive confidentiality in writing,
24 records contained in the court file may not be obtained by subpoena

1 but 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
5 this 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 this
16 code.

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

22 **§53-8-4. Petition seeking relief.**

23 (a) *Underlying acts.* -- A petitioner may seek relief under
24 this article by filing with a magistrate court a petition that

1 alleges the commission of any of the following acts against the
2 petitioner by the respondent:

3 (1) A sexual offense or attempted sexual offense as defined in
4 section one of this article; or

5 (2) A violation of section nine-a, article two, chapter sixty-
6 one of this code.

7 (b) *Contents.* --

8 The petition shall:

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

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

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

16 (I) The nature and extent of the act specified in subsection
17 (a) of this section for which the relief is being sought, including
18 information known to the petitioner concerning previous harm or
19 injury resulting from an act specified in subsection (a) of this
20 section by the respondent;

21 (ii) Each previous and pending action between the parties in
22 any court; and

23 (iii) The whereabouts of the respondent.

24 (c) *Address may be stricken.* -- If, in a proceeding under this

1 article, a petitioner alleges, and the court finds, that the
2 disclosure of the address of the petitioner would risk further harm
3 to the petitioner or a member of the petitioner's household, that
4 address may be stricken from the petition and omitted from all
5 other documents filed with, or transferred to, a court.

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

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

18 **§53-8-5. Temporary personal safety orders.**

19 (a) *Authorized; forms of relief available.* --

20 (1) If after a hearing on a petition, whether ex parte or
21 otherwise, a magistrate finds that there is reasonable cause to
22 believe that the respondent has committed an act specified in
23 subsection (a), section four of this article, against the
24 petitioner, the magistrate shall issue a temporary personal safety

1 order to protect the petitioner.

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

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

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

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

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

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

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

22 (I) A weapon was used or threatened to be used in the
23 commission of the offense predating the petitioning for the
24 personal safety order;

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

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

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

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

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

13 (b) *Immediate.* -- The temporary personal safety order shall be
14 immediately served on the respondent by law enforcement, or at the
15 option of the petitioner, pursuant to rules promulgated pursuant to
16 section fifteen of this article.

17 (c) *Length of effectiveness.* --

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

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

24 (d) *Final personal safety order hearing.* -- The magistrate may

1 proceed with a final personal safety order hearing instead of a
2 temporary personal safety order hearing if:

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

4 (B) The court otherwise has personal jurisdiction over the
5 respondent; and

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

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

10 (a) *Respondent's opportunity to be heard.* -- A respondent
11 shall have an opportunity to be heard on the question of whether
12 the magistrate should issue a final personal safety order subject
13 to the provisions of this section.

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

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

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

20 (2) The temporary personal safety order shall include notice
21 to the respondent:

22 (A) In at least ten-point bold type, that if the respondent
23 fails to appear at the final personal safety order hearing, the
24 respondent may be served by first-class mail at the respondent's

1 last known address with the final personal safety order and all
2 other notices concerning the final personal safety order;

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

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

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

10 **§53-8-7. Personal safety hearing; forms of relief.**

11 (a) *Final personal safety order hearing.* --

12 *Proceeding; issuance of order.* -- If the respondent appears
13 for the final personal safety order hearing, has been served with
14 a temporary personal safety order or the respondent waives personal
15 service, the magistrate:

16 (1) May proceed with the final personal safety order hearing;
17 and

18 (2) May issue a final personal safety order to protect the
19 petitioner if the court finds by a preponderance of the evidence
20 that:

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

24 (ii) The petitioner has a reasonable apprehension of continued

1 unwanted or unwelcome contacts by the respondent; or

2 (B) The respondent consents to the entry of a personal safety
3 order.

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

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

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

12 (2) Each party has a reasonable apprehension of continued
13 unwanted or unwelcome contacts by the other party.

14 (d) *Personal safety order - Forms of relief.* --

15 (1) The final personal safety order may include any or all of
16 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 involving
17 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 (2) If the magistrate issues an order under this section, the
24 order shall contain only the relief necessary to protect the

1 petitioner.

2 (e) *Personal safety order - Service.* --

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

10 (2) (A) A copy of the final personal safety order served on
11 the respondent in accordance with subdivision (1) of this
12 subsection or the hearing the announcement of the court's ruling in
13 court, constitutes actual notice to the respondent of the contents
14 of the final personal safety order.

15 (B) Service is complete upon mailing.

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

19 **§53-8-8. Modification and rescission.**

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

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

23 (2) A hearing.

24 (b) Modification may include extending the term of the

1 personal safety order if the order was previously issued for a term
2 of less than the two-year maximum term set forth in section six of
3 this article.

4 **§53-8-9. Appeals.**

5 (a) If a magistrate grants or denies relief under a petition
6 filed under this article, a respondent or a petitioner may appeal
7 to the circuit court for the county where the magistrate court is
8 located.

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

11 (c) (1) If an appeal is filed under this section, the
12 magistrate court judgment shall remain in effect until superseded
13 by a judgment of the circuit court; and

14 (2) Unless the circuit court orders otherwise, modification or
15 enforcement of the magistrate court order shall be by the
16 magistrate court.

17 **§53-8-10. Statement concerning violations.**

18 A temporary personal safety order and final personal safety
19 order issued under this article shall state that a violation of the
20 order may result in:

21 (1) Criminal prosecution; and

22 (2) Incarceration, fine or both.

23 **§53-8-11. Penalties.**

24 (a) *Fines or incarceration.* -- An individual who fails to

1 comply with the relief granted in a temporary personal safety order
2 or a final personal safety order entered pursuant to this article
3 is guilty of a misdemeanor and, upon conviction thereof, shall:

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

6 (2) For a second or subsequent offense, be fined not more than
7 \$2,500 or confined in jail not more than one year, or both.

8 (b) *Arrest.* -- A law-enforcement officer shall arrest with or
9 without a warrant and take into custody an individual who the
10 officer has probable cause to believe is in violation of a
11 temporary or final personal safety order in effect at the time of
12 the violation.

13 **§53-8-12. Priority of petitions.**

14 Any petition filed in magistrate court under the provisions of
15 this article shall be given priority over any other civil action
16 before the court, except actions pursuant to article twenty-seven,
17 chapter forty-eight of this code and those in which trial is in
18 progress, and shall be docketed immediately upon filing.

19 **§53-8-13. Fees and costs.**

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

1 (b) *Assessment of court costs and fees when temporary order is*
2 *denied.* -- If the petition is denied, court costs and fees shall be
3 assessed by the magistrate against the petitioner at the conclusion
4 of the temporary hearing, unless a fee waiver affidavit reflecting
5 inability to pay has been filed or prohibited by federal law.

6 (c) Costs and fees may not be assessed against a prevailing
7 party.

8 (d) *Assessment of court costs and fees when personal safety*
9 *order is granted.* -- Except as in subsection (c), court costs and
10 fees shall be assessed by the court at the conclusion of a
11 proceeding, unless a fee waiver affidavit reflecting inability to
12 pay has been filed.

13 (e) *Assessment of court costs and fees when petitioner moves*
14 *to terminate order.* -- No court costs or fees shall be assessed
15 against a petitioner who moves to terminate an order, whether the
16 court grants or denies the motion.

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

1 entered directing the filing of a new affidavit.

2 **§53-8-14. Service by law enforcement.**

3 Notwithstanding any other provision of this code to the
4 contrary, all law-enforcement officers are hereby authorized and
5 required to serve all pleadings and orders filed or entered
6 pursuant to this article on Sundays and legal holidays. No law-
7 enforcement officer may refuse to serve any pleadings or orders
8 entered pursuant to this article. Law enforcement shall attempt to
9 serve all orders without delay: *Provided*, That service of process
10 shall be attempted within seventy-two hours of law enforcement's
11 receipt of the order. If service is not made, law enforcement
12 shall continue to attempt service on the respondent until proper
13 service is made.

14 **§53-8-15. Rules and forms.**

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

17 (b) *Petition form.* --

18 (1) The Supreme Court of Appeals is requested to adopt a form
19 for a petition under this article.

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

1 **§53-8-16. Limitation on use of information.**

2 Nothing in this article authorizes the inclusion of
3 information contained in petition, pleadings or orders provided for
4 by this article to be submitted to any local, state, interstate,
5 national or international systems of criminal identification
6 pursuant to section twenty-four, article two, chapter fifteen of
7 this code. Nothing in this section prohibits the West Virginia
8 State Police from processing information through its criminal
9 identification bureau with respect to any actual charge or
10 conviction of a crime.

11 **§53-8-17. Immunity from liability.**

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

15 **§53-8-18. Sealing of records.**

16 (a) *Definitions.* --

17 (1) In this section the following words have the meanings
18 indicated.

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

24 (3) "Seal" means to remove information from public inspection

1 in accordance with this section.

2 (4) "Sealing" means:

3 (A) With respect to a record kept in a courthouse, removing to
4 a separate secure area to which persons who do not have a
5 legitimate reason for access are denied access;

6 (B) With respect to electronic information about a proceeding
7 on the website maintained by the magistrate court, circuit court or
8 the Supreme Court of Appeals, removing the information from the
9 public website; and

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

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

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

19 (d) *Notice, hearing and findings.* --

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

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

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

1 (A) Good cause to grant the request. In determining whether
2 there is good cause to grant the request to seal court records, the
3 court shall balance the privacy and potential danger of adverse
4 consequences to the parties against the potential risk of future
5 harm and danger to the petitioner and the community; and

6 (B) That none of the following are pending at the time of the
7 hearing:

8 (I) A temporary personal safety order or protective order
9 issued against the respondent in a proceeding between the
10 petitioner and the respondent; or

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

14 (e) *Access to a sealed record.* --

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

17 (A) A law-enforcement officer;

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

20 (C) A prosecuting attorney; or

21 (D) An employee of the Department of Health and Human
22 Resources.

23 (2) (A) A person not listed in subdivision (1) of this
24 subsection may subpoena or file a motion for access to a record

1 sealed under this section.

2 (B) If the circuit court finds that the person has a
3 legitimate reason for access, the court may grant the person access
4 to the sealed record under the terms and conditions that the court
5 determines.

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

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