

**WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2012**

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 191

**(SENATORS KESSLER (MR. PRESIDENT), STOLLINGS,
UNGER, LAIRD AND JENKINS, ORIGINAL SPONSORS)**

[PASSED MARCH 7, 2012; IN EFFECT NINETY DAYS FROM PASSAGE.]

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2012 MAR 20 PM 4:00

FILED

SB 191

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(SENATORS KESSLER (MR. PRESIDENT), STOLLINGS,
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AN ACT 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 and §53-8-17, 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; 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 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 and §53-8-17, all to read as follows:

ARTICLE 8. PERSONAL SAFETY ORDERS.

§53-8-1. Definitions.

1 In this article the following words have the meanings
2 indicated.

3 (1) *Final personal safety order.* — “Final personal safety
4 order” means a personal safety order issued by a magistrate
5 under section seven of this article.

6 (2) *Incapacitated adult.* — “Incapacitated adult” means
7 any person who by reason of physical, mental or other
8 infirmity is unable to physically carry on the daily activities
9 of life necessary to sustaining life and reasonable health.

10 (3) *Law-enforcement officer.* — “Law-enforcement
11 officer” means any duly authorized member of a law-
12 enforcement agency who is authorized to maintain public
13 personal safety and order, prevent and detect crime, make
14 arrests and enforce the laws of the state or any county or
15 municipality thereof, other than parking ordinances.

16 (4) *Petitioner.* — “Petitioner” means an individual who
17 files a petition under section four of this article.

18 (5) *Place of employment.* — “Place of employment”
19 includes the grounds, parking areas, outbuildings and
20 common or public areas in or surrounding the place of
21 employment.

22 (6) *Residence.* — “Residence” includes the yard, grounds,
23 outbuildings and common or public areas in or surrounding
24 the residence.

25 (7) *Respondent.* — “Respondent” means an individual
26 alleged in a petition to have committed an act specified in
27 subsection (a), section four of this article against a petitioner.

28 (8) *School.* — “School” means an educational facility
29 comprised of one or more buildings, including school
30 grounds, a school bus or any school-sponsored function or
31 extracurricular activities. For the purpose of this subdivi-

32 sion, "school grounds" includes the land on which a school
33 is built together with such other land used by students for
34 play, recreation or athletic events while attending school.
35 "Extracurricular activities" means voluntary activities
36 sponsored by a school, a county board or an organization
37 sanctioned by a county board or the State Board of Educa-
38 tion and include, but are not limited to, preparation for and
39 involvement in public performances, contests, athletic
40 competitions, demonstrations, displays, organizations and
41 clubs.

42 (9) *Sexual offense*. — "Sexual offense" means the
43 commission of any of the following sections:

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

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

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

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

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

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

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

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

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

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

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

66 (L) Section two, article eight-c, chapter sixty-one of this
67 code;

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

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

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

74 (P) Section six, article eight-d, chapter sixty-one of this
75 code.

76 (10) *Temporary personal safety order.* – “Temporary
77 personal safety order” means a personal safety order issued
78 by a magistrate under section five of this article.

§53-8-2. Confidentially of proceedings.

1 (a) *General Provisions.* – All orders, findings, pleadings,
2 recordings, exhibits, transcripts or other documents con-
3 tained in a court file are confidential and are not available
4 for public inspection: *Provided*, That unless the file is sealed
5 pursuant to section eighteen of this article or access is
6 otherwise prohibited by order, any document in the file shall
7 be available for inspection and copying by the parties,
8 attorneys of record, guardians ad litem, designees authorized
9 by a party in writing and law enforcement. A magistrate or
10 circuit judge may open and inspect the entire contents of the
11 court file in any case pending before the magistrate’s or
12 judge’s court. When sensitive information has been disclosed
13 in a hearing, pleading or document filing, the court may
14 order such information sealed in the court file. Sealed court
15 files shall be opened only pursuant to section eighteen of this
16 article.

17 (b) (1) *Proceedings are not open to the public.* – Hear-
18 ings conducted pursuant to this article are closed to the

19 general public except that persons whom the court deter-
20 mines have a legitimate interest in the proceedings may
21 attend.

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

26 (c) *Orders permitting examination or copying of file*
27 *contents.* — Upon written motion, for good cause shown, the
28 court may enter an order permitting a person who is not
29 permitted access to a court file under subsection (a) to
30 examine and/or copy documents in a file. Such orders shall
31 set forth specific findings which demonstrate why the
32 interests of justice necessitate the examination, copying, or
33 both, and shall specify the particular documents to be
34 examined and/or copied and the arrangements under which
35 such examination, copying, or both, may take place.

36 (d) *Obtaining confidential records.* — Unless both the
37 petitioner and the respondent waive confidentiality in
38 writing, records contained in the court file may not be
39 obtained by subpoena but only by court order and upon full
40 compliance with statutory and case law requirements.

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

1 (a) *Who may file a petition.* — A petition for relief under
2 this article may be filed by:

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

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

7 (b) *Other remedies generally not precluded.* — By
8 proceeding under this article, a petitioner is not limited to or
9 precluded from pursuing any other legal remedy.

10 (c) *Circumstances where article is inapplicable.* — This
11 article does not apply to a petitioner who is a person eligible

12 for relief under article twenty-seven, chapter forty-eight of
13 this code.

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

§53-8-4. Petition seeking relief.

1 (a) *Underlying acts.* — A petitioner may seek relief under
2 this article by filing with a magistrate court a petition that
3 alleges the commission of any of the following acts against
4 the petitioner by the respondent:

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

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

9 (b) *Contents.* —

10 The petition shall:

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

16 (2) Subject to the provisions of subsection (c) of this
17 section, contain the address of the petitioner; and

18 (3) Include all information known to the petitioner of:

19 (A) The nature and extent of the act specified in subsec-
20 tion (a) of this section for which the relief is being sought,
21 including information known to the petitioner concerning
22 previous harm or injury resulting from an act specified in
23 subsection (a) of this section by the respondent;

24 (B) Each previous and pending action between the
25 parties in any court; and

26 (C) The whereabouts of the respondent.

27 (c) *Address may be stricken.* — If, in a proceeding under
28 this article, a petitioner alleges, and the court finds, that the
29 disclosure of the address of the petitioner would risk further
30 harm to the petitioner or a member of the petitioner's
31 household, that address may be stricken from the petition
32 and omitted from all other documents filed with, or trans-
33 ferred to, a court.

34 (d) *Providing false information.* — An individual who
35 knowingly provides false information in a petition filed
36 under this section is guilty of a misdemeanor and, upon
37 conviction thereof, shall be fined not less than \$50 nor more
38 than \$1,000 or confined in jail not more than ninety days, or
39 both.

40 (e) *Withdrawal or dismissal of a petition prior to adjudi-*
41 *cation operates as a dismissal without prejudice.* — No
42 action for a personal safety order may be dismissed because
43 the respondent is being prosecuted for a crime against the
44 petitioner. For any action commenced under this article,
45 dismissal of a case or a finding of not guilty, does not require
46 dismissal of the action for a civil protection order.

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

1 (a) *Authorized; forms of relief available.* —

2 (1) If after a hearing on a petition, whether ex parte or
3 otherwise, a magistrate finds that there is reasonable cause
4 to believe that the respondent has committed an act specified
5 in subsection (a), section four of this article, against the
6 petitioner, the magistrate shall issue a temporary personal
7 safety order to protect the petitioner.

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

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

13 (B) Order the respondent to refrain from contacting,
14 attempting to contact or harassing the petitioner directly,
15 indirectly or through third parties regardless of whether
16 those third parties know of the order;

17 (C) Order the respondent to refrain from entering the
18 residence of the petitioner;

19 (D) Order the respondent to remain away from the place
20 of employment, school or residence of the petitioner: *Pro-*
21 *vided*, That when the respondent is alleged to have commit-
22 ted an act specified in subdivision (2), subsection (a), section
23 four of this article, the magistrate may not prohibit the
24 respondent from entering the respondent's place of employ-
25 ment;

26 (E) Order the respondent not to visit, assault, molest or
27 otherwise interfere with the petitioner and, if the petitioner
28 is a child, the petitioner's siblings and minors residing in the
29 household of the petitioner;

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

33 (i) A weapon was used or threatened to be used in the
34 commission of the offense predicated the petitioning for the
35 personal safety order;

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

38 (iii) The respondent has been convicted of an offense
39 involving the use of a firearm; and

40 (G) Order either party to pay filing fees and costs of a
41 proceeding pursuant to section thirteen of this article.

42 (3) If the magistrate issues an order under this section,
43 the order shall contain only the relief necessary to protect
44 the petitioner.

45 (b) *Immediate.* — The temporary personal safety order
46 shall be immediately served on the respondent by law
47 enforcement, or at the option of the petitioner, pursuant to
48 rules promulgated pursuant to section fifteen of this article.

49 (c) *Length of effectiveness.* —

50 (1) The temporary personal safety order shall be effective
51 for not more than ten days after service of the order.

52 (2) The magistrate may extend the temporary personal
53 safety order to effectuate service of the order or for other
54 good cause. The failure to obtain service upon the respondent
55 does not constitute a basis to dismiss the petition.

56 (d) *Final personal safety order hearing.* — The magistrate
57 may proceed with a final personal safety order hearing
58 instead of a temporary personal safety order hearing if:

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

60 (B) The court otherwise has personal jurisdiction over the
61 respondent; and

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

§53-8-6. Respondent's opportunity to be heard; notice to respon-
dent.

1 (a) *Respondent's opportunity to be heard.* — A respon-
2 dent shall have an opportunity to be heard on the question of
3 whether the magistrate should issue a final personal safety
4 order subject to the provisions of this section.

5 (b) *Personal safety order hearing.* — Date and time;
6 notice.

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

9 (B) Unless continued for good cause, the final personal
10 safety order hearing shall be held no later than ten days after

11 the temporary personal safety order is served on the respon-
12 dent.

13 (2) The temporary personal safety order shall include
14 notice to the respondent:

15 (A) In at least ten-point bold type, that if the respondent
16 fails to appear at the final personal safety order hearing, the
17 respondent may be served by first-class mail at the respon-
18 dent's last known address with the final personal safety
19 order and all other notices concerning the final personal
20 safety order;

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

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

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

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

1 (a) *Final personal safety order hearing.* —

2 *Proceeding; issuance of order.* — If the respondent
3 appears for the final personal safety order hearing, has been
4 served with a temporary personal safety order or the respon-
5 dent waives personal service, the magistrate:

6 (1) May proceed with the final personal safety order
7 hearing; and

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

11 (A) (i) The respondent has committed an act specified in
12 subsection (a), section four of this article against the peti-
13 tioner; and

14 (ii) The petitioner has a reasonable apprehension of
15 continued unwanted or unwelcome contacts by the respon-
16 dent; or

17 (B) The respondent consents to the entry of a personal
18 safety order.

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

22 (c) In cases where both parties file a petition under
23 section four of this article, the court may issue mutual
24 personal safety orders if the court finds by a preponderance
25 of the evidence that:

26 (1) Each party has committed an act specified in subsec-
27 tion (a), section four of this article against the other party;
28 and

29 (2) Each party has a reasonable apprehension of contin-
30 ued unwanted or unwelcome contacts by the other party.

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

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

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

37 (B) Order the respondent to refrain from contacting,
38 attempting to contact or harassing the petitioner directly,
39 indirectly, or through third parties regardless of whether
40 those third parties know of the order;

41 (C) Order the respondent to refrain from entering the
42 residence of the petitioner;

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

45 (E) Order the respondent not to visit, assault, molest or
46 otherwise interfere with the petitioner and, if the petitioner
47 is a child, the petitioner's siblings and minors residing in the
48 household of the petitioner;

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

52 (i) A weapon was used or threatened to be used in the
53 commission of the offense predicated the petitioning for the
54 personal safety order;

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

57 (iii) The respondent has been convicted of an offense
58 involving the use of a firearm; and

59 (G) Order either party to pay filing fees and costs of a
60 proceeding pursuant to section thirteen of this article.

61 (2) If the magistrate issues an order under this section,
62 the order shall contain only the relief necessary to protect
63 the petitioner.

64 (e) *Personal safety order - Service.* —

65 (1) A copy of the final personal safety order shall be
66 served on the petitioner, the respondent, the appropriate
67 law-enforcement agency and any other person the court
68 determines is appropriate, including a county board of
69 education, in open court or, if the person is not present at the
70 final personal safety order hearing, by first-class mail to the
71 person's last known address or by other means in the
72 discretion of the court.

73 (2) (A) A copy of the final personal safety order served on
74 the respondent in accordance with subdivision (1) of this
75 subsection or the hearing of the announcement of the court's
76 ruling in court, constitutes actual notice to the respondent of
77 the contents of the final personal safety order.

78 (B) Service is complete upon mailing.

79 (f) *Length of effectiveness.* — All relief granted in a final
80 personal safety order shall be effective for the period stated
81 in the order, not to exceed two years.

§53-8-8. Modification and rescission.

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

3 (1) Giving notice to the petitioner and the respondent;
4 and

5 (2) A hearing.

6 (b) Modification may include extending the term of the
7 personal safety order if the order was previously issued for
8 a term of less than the two-year maximum term set forth in
9 section seven of this article.

§53-8-9. Appeals.

1 (a) If a magistrate grants or denies relief under a petition
2 filed under this article, a respondent or a petitioner may
3 appeal to the circuit court for the county where the magis-
4 trate court is located.

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

7 (c) (1) If an appeal is filed under this section, the magis-
8 trate court judgment shall remain in effect until superseded
9 by a judgment of the circuit court; and

10 (2) Unless the circuit court orders otherwise, modifica-
11 tion or enforcement of the magistrate court order shall be by
12 the magistrate court.

§53-8-10. Statement concerning violations.

1 A temporary personal safety order and final personal
2 safety order issued under this article shall state that a
3 violation of the order may result in:

- 4 (1) Criminal prosecution; and
- 5 (2) Incarceration, fine or both.

§53-8-11. Penalties.

1 (a) *Fines or incarceration.* — An individual who fails to
2 comply with the relief granted in a temporary personal safety
3 order or a final personal safety order entered pursuant to this
4 article is guilty of a misdemeanor and, upon conviction
5 thereof, shall:

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

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

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

§53-8-12. Priority of petitions.

1 Any petition filed in magistrate court under the provi-
2 sions of this article shall be given priority over any other
3 civil action before the court, except actions pursuant to
4 article twenty-seven, chapter forty-eight of this code and
5 those in which trial is in progress, and shall be docketed
6 immediately upon filing.

§53-8-13. Fees and costs.

1 (a) *Charges for fees and costs postponed.* — No fees may
2 be charged for the filing of petitions or other papers, service
3 of petitions or orders, copies of orders or other costs for
4 services provided by, or associated with, any proceedings
5 under this article until the matter is brought before the court
6 for final resolution.

7 (b) *Assessment of court costs and fees when temporary*
8 *order is denied.* — If the petition is denied, court costs and
9 fees shall be assessed by the magistrate against the petitioner
10 at the conclusion of the temporary hearing, unless a fee
11 waiver affidavit reflecting inability to pay has been filed or
12 prohibited by federal law.

13 (c) Costs and fees may not be assessed against a prevail-
14 ing party.

15 (d) *Assessment of court costs and fees when personal*
16 *safety order is granted.* — Except as in subsection (c), court
17 costs and fees shall be assessed by the court at the conclusion
18 of a proceeding, unless a fee waiver affidavit reflecting
19 inability to pay has been filed.

20 (e) *Assessment of court costs and fees when petitioner*
21 *moves to terminate order.* — No court costs or fees shall be
22 assessed against a petitioner who moves to terminate an
23 order, whether the court grants or denies the motion.

24 (f) A person seeking waiver of fees, costs or security
25 pursuant to section one, article two, chapter fifty-nine of this
26 code shall execute before the clerk where the matter is
27 pending a fee waiver affidavit which shall be kept confiden-
28 tial. An additional fee waiver affidavit shall be filed when-
29 ever the financial condition of the person no longer conforms
30 to the financial condition established by the Supreme Court
31 of Appeals for determining inability to pay fees or whenever
32 an order has been entered directing the filing of a new
33 affidavit.

§53-8-14. Service by law enforcement.

1 Notwithstanding any other provision of this code to the
2 contrary, all law-enforcement officers are hereby authorized
3 and required to serve all pleadings and orders filed or
4 entered pursuant to this article on Sundays and legal
5 holidays. No law-enforcement officer may refuse to serve any
6 pleadings or orders entered pursuant to this article. Law
7 enforcement shall attempt to serve all orders without delay:

8 *Provided*, That service of process shall be attempted within
9 seventy-two hours of law enforcement's receipt of the order.
10 If service is not made, law enforcement shall continue to
11 attempt service on the respondent until proper service is
12 made.

§53-8-15. Rules and forms.

1 (a) *Authorized*. — The Supreme Court of Appeals may
2 adopt rules and forms to implement the provisions of this
3 article.

4 (b) *Petition form*. —

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

7 (2) A petition form shall contain notice to a petitioner
8 that an individual who knowingly provides false information
9 in a petition filed under this subtitle is guilty of a misde-
10 meanor and, on conviction, is subject to the penalties
11 specified in section four of this article.

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

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

§53-8-17. Sealing of records.

1 (a) *Definitions*. —

2 (1) In this section the following words have the meanings
3 indicated.

4 (2) "Court record" means an official record of a court

5 about a proceeding that the clerk of a court or other court
6 personnel keeps. "Court record" includes an index, a docket
7 entry, a petition or other pleading, a memorandum, a
8 transcription of proceedings, an electronic recording, an
9 order and a judgment.

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

12 (4) "Sealing" means:

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

16 (B) With respect to electronic information about a
17 proceeding on the website maintained by the magistrate
18 court, circuit court or the Supreme Court of Appeals,
19 removing the information from the public website; and

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

24 (b) *Written request.* — Either party to a petition filed
25 pursuant to this article may file a written request with the
26 clerk to seal all court records relating to the proceeding.

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

30 (d) *Notice, hearing and findings.* —

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

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

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

37 (A) Good cause to grant the request. In determining
38 whether there is good cause to grant the request to seal court
39 records, the court shall balance the privacy and potential
40 danger of adverse consequences to the parties against the
41 potential risk of future harm and danger to the petitioner
42 and the community; and

43 (B) That none of the following are pending at the time of
44 the hearing:

45 (i) A temporary personal safety order or protective order
46 issued against the respondent in a proceeding between the
47 petitioner and the respondent; or

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

51 (e) *Access to a sealed record.* —

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

54 (A) A law-enforcement officer;

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

57 (C) A prosecuting attorney; or

58 (D) An employee of the Department of Health and
59 Human Resources.

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

63 (B) If the court finds that the person has a legitimate
64 reason for access, the court may grant the person access to
65 the sealed record under the terms and conditions that the
66 court determines.

67 (C) In ruling on a motion under this subdivision, the
68 court shall balance the person's need for access to the record

69 with the respondent's right to privacy and the potential harm
70 of unwarranted adverse consequences to the respondent that
71 the disclosure may create.

72 (f) *Compliance with order.* — Within sixty days after
73 entry of an order under subdivision (3), subsection (d) of this
74 section, each custodian of court records that are subject to
75 the order of sealing shall advise in writing the court and the
76 parties of compliance with the order.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

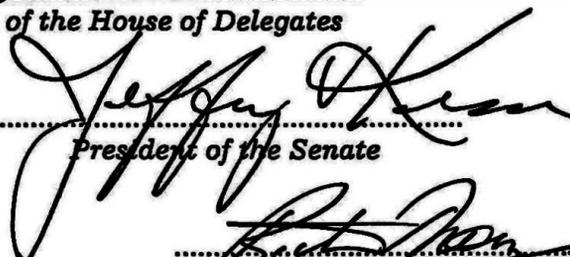

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker of the House of Delegates

The within is approved this the 20th
March
Day of, 2012.


.....
Governor

FILED

2012 MAR 20 PM 4:00

OFFICE WEST VIRGINIA
SECRETARY OF STATE

PRESENTED TO THE GOVERNOR

MAR 15 2012

Time 1:57 pm