

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 571

BY SENATORS IHLENFELD, BEACH, AND BALDWIN

[Introduced February 11, 2019; Referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §53-9-1, §53-9-2, §53-9-3, §53-9-4, §53-9-5, §53-9-6, §53-9-7, §53-9-8, §53-
3 9-9, §53-9-10, §53-9-11, §53-9-12, §53-9-13, §53-9-14, §53-9-15, §53-9-16, §53-9-17,
4 §53-9-18, and §53-9-19, all relating to establishing a method for courts to order financial
5 exploitation protection orders; providing for definitions; requiring confidentiality of the
6 proceedings; establishing certain conditions to review or copy proceeding files; providing
7 for persons to file a petition; providing for applicability; establishing the information that
8 must be contained within the petition for relief; creating temporary financial exploitation
9 orders issued by a magistrate; providing for the transfer of a temporary financial
10 exploitation order to circuit court; granting jurisdiction to circuit courts for a transfer;
11 providing for respondent's right to be heard; requiring notice to be served on the
12 respondent; establishing procedures for victims with diminished capacity; establishing the
13 circuit court to issue the final financial exploitation protection order; specifying the forms
14 of relief; requiring the final order be served on the respondent; establishing procedures for
15 modification and rescission of temporary or final financial exploitation orders; establishing
16 rights and procedures for appeal; requiring a statement concerning violations of the
17 temporary or final financial exploitation order; establishing penalties; establishing the
18 priority of petitions in the circuit court; providing for fees and costs; providing for
19 exemptions to fees and costs under certain conditions; requiring service by law
20 enforcement; establishing rule-making authority with the Supreme Court of Appeals;
21 providing limitations on the use of information from proceedings; and providing for
22 procedures to seal records of proceedings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. FINANCIAL EXPLOITATION PROTECTION ORDERS.

§53-9-1. Definitions.

1 In this article, the following words have the meanings indicated:

2 (a) "Elderly person" means a person who is 62 years or older.

3 (b) "Court record" means an official record of a court about a proceeding kept by the court
4 clerk or designated court personnel. "Court record" includes an index, a docket entry, a petition
5 or other pleading, a memorandum, a transcription of proceedings, an electronic recording, an
6 order a judgement or any other document made a part of the court file;

7 (c) "Diminished capacity" means the inability to address, avoid, prevent or stop financial
8 exploitation because of physical, mental or emotional conditions.

9 (d) "Final financial exploitation protective order" means a financial exploitation protective
10 order issued by a magistrate under §53-9-7 of this code.

11 (e) "Financial exploitation" means intentional misappropriation or misuse of funds or
12 assets of an elderly person, protected person or incapacitated adult, or use of undue influence
13 resulting in financial or asset loss or disadvantage to an elderly person, protected person or
14 incapacitated adult.

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

18 (g) "Intimate partner" means a current or former spouse, a person with whom one shares
19 a child in common, a person with whom one is cohabiting or has cohabited, or a person with
20 whom one is or has been in a relationship of a romantic or intimate nature.

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

25 (i) "Petitioner" means an individual who files a petition under §53-9-4 of this code. A
26 petitioner may be the alleged victim of the financial exploitation or a person or entity filing a petition
27 on behalf of or for the protection of the alleged victim.

28 (j) "Place of employment" includes the grounds, parking areas, outbuildings and common
29 or public areas in or surrounding the place of employment.

30 (k) "Protected person" means any person who is defined as a "protected person" in §44A-
31 1-4 of this code and who is subject to the protections of Chapter 44A or 44C of this code.

32 (l) "Residence" includes the yard, grounds, outbuildings and common or public areas in or
33 surrounding the residence.

34 (m) "Respondent" means an individual alleged in a petition to have committed an act
35 specified in §53-9-4(a) of this code against a petitioner.

36 (n) "Seal" means to remove information from public inspection.

37 (o) "Sealing" means:

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

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

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

46 (p) "Temporary financial exploitation protective order" means a financial exploitation
47 protective order issued by a magistrate under §53-9-5 of this code.

48 (q) "Undue influence" means excessive persuasion that causes another person to act or
49 refrain from acting by overcoming that person's free will and results in inequity.

50 (1) In determining whether a result was produced by undue influence, all of the following
51 shall be considered:

52 (A) The vulnerability of the victim. Evidence of vulnerability may include, but is not limited
53 to, incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional

54 distress, isolation, or dependency, and whether the influencer knew or should have known of the
55 alleged victim's vulnerability.

56 (B) The influencer's apparent authority. Evidence of apparent authority may include, but
57 is not limited to, status as a fiduciary, family member, care provider, health care professional,
58 legal professional, spiritual adviser, expert, or other qualification.

59 (C) The actions or tactics used by the influencer. Evidence of actions or tactics used may
60 include, but is not limited to, controlling necessities of life, medication, the victim's interactions
61 with others, access to information, or sleep; use of affection, intimidation, or coercion; or initiation
62 of changes in personal or property rights, use of haste or secrecy in effecting those changes,
63 effecting changes at inappropriate times and places, and claims of expertise in effecting changes.

64 (D) The equity of the result. Evidence of the equity of the result may include, but is not
65 limited to, the economic consequences to the victim, any divergence from the victim's prior intent
66 or course of conduct or dealing, the relationship of the value conveyed to the value of any services
67 or consideration received, or the appropriateness of the change in light of the length and nature
68 of the relationship.

69 (2) Evidence of an inequitable result, without more, is not sufficient to prove undue
70 influence.

71 (r) "Victim" means the person who has allegedly suffered a financial or asset loss or
72 disadvantage as a result of financial exploitation by the respondent.

§53-9-2. Confidentiality of proceedings; copying of files.

1 (a) All orders, findings, pleadings, recordings, exhibits, transcripts or other documents
2 contained in a court file are confidential and are not available for public inspection: *Provided, That*
3 unless the file is sealed pursuant to §53-9-17 of this code or access is otherwise prohibited by
4 order, any document in the file shall be available for inspection and copying by the parties,
5 attorneys of record, guardians *ad litem*, designees authorized by a party in writing and law
6 enforcement. A magistrate or circuit judge may open and inspect the entire contents of the court

7 file in any case pending before any court. When sensitive information has been disclosed in a
8 hearing, pleading, or document filing, the court may order such information sealed in the court
9 file. Sealed court files shall be opened only pursuant to §53-9-17 of this code.

10 (b) Hearings conducted pursuant to this article are closed to the general public, *Provided,*
11 That persons whom the court determines have a legitimate interest in the proceedings may
12 attend. A person accompanying the petitioner or victim may not be excluded from being present,
13 if his or her presence is desired by the petitioner or victim, unless the person's behavior is
14 disruptive to the proceeding.

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

21 (d) Unless both the petitioner and the respondent waive confidentiality in writing, records
22 contained in the court file may not be obtained by subpoena but only by court order and upon full
23 compliance with statutory and case law requirements.

§53-9-3. Who may file; exclusivity; applicability of article.

1 (a) A petition for relief under this article may be filed by any of the following persons:

2 (1) A person seeking relief under this article for herself or himself as a victim of financial
3 exploitation;

4 (2) On behalf of a protected person or a person with diminished capacity:

5 (A) A guardian, conservator, or other fiduciary;

6 (B) A person authorized to make health-care decisions;

7 (C) A spouse, intimate partner, parent, sibling, or descendant;

8 (D) A caregiver or another person that demonstrates sufficient interest in the welfare of a

9 victim; or

10 (E) A governmental agency having regulatory authority to protect the welfare of the victim.

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

13 (c) No person may be refused the right to file a petition under the provisions of this article.

14 No person may be denied relief under the provisions of this article if she or he presents facts
15 sufficient under the provisions of this article for the relief sought.

§53-9-4. Petition seeking relief.

1 (a) A petitioner may seek relief under this article by filing with a magistrate court a petition
2 that alleges the commission of financial exploitation as defined in this article.

3 (b) The petition shall:

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

7 (2) Subject to the provisions of subsection (c) of this section, contain the address of the
8 petitioner and, if filed on behalf of a victim, the address of the victim; and

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

10 (A) The nature and extent of the act specified in subsection (a) of this section for which
11 the relief is being sought, including information known to the petitioner concerning previous harm
12 or injury resulting from an act specified in subsection (a) of this section by the respondent;

13 (B) Each previous and pending action between the petitioner, victim, or respondent in any
14 court; and

15 (C) The whereabouts of the respondent.

16 (c) If, in a proceeding under this article, a petitioner alleges, and the court finds, that the
17 disclosure of the address of the petitioner or the victim would risk further harm to the petitioner,
18 the victim, or a member of their respective households, those addresses may be stricken from

19 the petition and omitted from all other documents filed with, or transferred to, a court.

20 (d) An individual who knowingly provides false information in a petition filed under this
21 section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50
22 nor more than \$1,000 or confined in jail not more than 90 days, or both.

23 (e) The withdrawal or dismissal of a petition sought pursuant to this article prior to
24 adjudication operates as a dismissal without prejudice. No action for a financial exploitation
25 protective order may be dismissed because the respondent is being prosecuted for a crime
26 against the petitioner. For any action commenced under this article, dismissal of a case or a
27 finding of not guilty, does not require dismissal of the action for a civil protection order.

28 (f) An action filed pursuant to the provisions of this article may be heard in the county in
29 which any underlying act occurred for which relief is sought in the petition, in the county in which
30 the respondent is living, or in the county in which the victim is living, either temporarily or
31 permanently.

§53-9-5 Temporary financial exploitation protective orders.

1 (a) If after a hearing on a petition, whether *ex parte* or otherwise, a magistrate finds by
2 clear and convincing evidence that the respondent has committed financial exploitation against
3 the victim, the magistrate shall issue a temporary financial exploitation protective order to protect
4 the victim.

5 (b) The temporary financial exploitation protective order may include any or all of the
6 following relief:

7 (1) Order the respondent to refrain from holding, accessing, or receiving any assets from
8 the victim;

9 (2) Order that the respondent may not be alone with the victim without the presence of
10 other individuals specified by the magistrate;

11 (3) Order the respondent to refrain from using undue influence to financially damage the
12 victim;

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

16 (5) Order the respondent to refrain from entering the residence of the victim;

17 (6) Order the respondent to remain away from the place of employment, school, or
18 residence of the victim;

19 (7) Order the respondent not to visit, assault, molest, or otherwise interfere with the victim;

20 (8) Order such other relief as the court deems reasonable under the circumstances; and

21 (9) Order either party to pay filing fees and costs of a proceeding pursuant to §53-9-13 of
22 this code.

23 (c) If the magistrate issues a temporary financial protective order under this section, the
24 order shall contain only the relief necessary to protect the victim.

25 (d) The temporary financial exploitation protective order shall be immediately served on
26 the respondent by law enforcement, or at the option of the petitioner, pursuant to rules
27 promulgated pursuant to §53-9-17 of this code.

28 (e) The temporary financial exploitation protection order shall be effective through the date
29 of the hearing established by the circuit court; and

30 (f) The magistrate may extend the temporary financial exploitation protective order to
31 effectuate service of the order or for other good cause. The failure to obtain service upon the
32 respondent pursuant to subsection (d) of this section does not constitute a basis to dismiss the
33 petition.

§53-9-6. Transfer to circuit court; jurisdiction.

1 (a) If the magistrate grants the initial petition and issues a temporary financial exploitation
2 protective order, the magistrate shall immediately transfer the matter to the circuit court of the
3 county in which the petition was filed. The temporary financial exploitation protective order issued
4 by the magistrate shall state that the matter has been transferred to the circuit court of appropriate

5 jurisdiction and will be set for hearing by the circuit court.

6 (b) Upon receipt of the notice of transfer from the magistrate court, the circuit court shall
7 set the matter for a review hearing within 30 days. The circuit clerk shall issue a notice of hearing
8 to all parties, including the petitioner, the victim, if applicable, the respondent, and any counsel of
9 record.

§53-9-7. Respondent's opportunity to be heard; notice to respondent.

1 (a) A respondent shall have an opportunity to be heard on the question of whether the
2 circuit court should issue a final financial exploitation protective order subject to the provisions of
3 this section.

4 (b) Upon receipt of the notice of transfer from the magistrate court, the circuit court shall
5 cause to be issued by the court clerk a notice of hearing, stating the date and time of the review
6 hearing, noting that the court may issue a final financial exploitation protective order at the review
7 hearing. The court clerk shall cause the notice to be served upon the respondent. Unless
8 continued for good cause, the final financial exploitation protective order hearing shall be held no
9 later than 30 days after the temporary financial exploitation protective safety order is served on
10 the respondent.

11 (c) The protective order notice of hearing issued by the circuit court shall include notice to
12 the respondent:

13 (1) In at least 10-point bold type, that if the respondent fails to appear at the review hearing
14 or the final financial exploitation protective order hearing, the respondent may be served by first-
15 class mail at the respondent's last known address with the final financial exploitation protective
16 order and all other notices concerning the final financial exploitation protective order;

17 (2) Specifying all the possible forms of relief under §53-9-7(d) of this code, that the final
18 financial exploitation protective order may contain;

19 (3) That the final financial exploitation protective order shall be effective for the period
20 stated in the order, not to exceed two years; and

21 (4) In at least 10-point bold type, that the respondent must notify the court in writing of any
22 change of address.

§53-9-8. Procedures for victims with diminished capacity.

1 If a petition is filed by a person other than the victim, and the circuit court determines that
2 the victim has been adjudicated as a protected person, the court shall:

3 (1) Recognize the petition for a financial exploitation protective order as a petition to modify
4 a guardianship or conservatorship pursuant to §44A-6-1 et seq of this code, and proceed in the
5 guardianship or conservatorship case pursuant to those statutory provisions; and

6 (2) Extend the temporary financial protective order for at least 30 days or until such time
7 as the matter may be brought for hearing pursuant to the applicable procedures of Chapter 44A
8 of this code.

§53-9-9. Financial exploitation protecting hearing; forms of relief.

1 (a) If the respondent appears for the final financial exploitation protective order hearing,
2 has been served with a temporary financial exploitation protective order or the respondent waives
3 personal service, the circuit court:

4 (1) May proceed with the final financial exploitation protective order hearing; and

5 (2) May issue, or recommend the issuance of, a final financial exploitation protective order
6 to protect the victim if the court finds by a preponderance of the evidence that:

7 (A) The respondent has committed an act against the victim that constitutes financial
8 exploitation; and

9 (B) The victim or the petitioner has a reasonable apprehension of continued financial
10 exploitation by the respondent; or

11 (C) The respondent consents to the entry of a financial exploitation protective order.

12 (b) A final financial exploitation protective order may be issued only to an individual who
13 has filed a petition or the victim on whose behalf a petition was filed under §53-9-3 of this code.

14 (c) The final financial exploitation protective safety order may include any or all of the

15 following relief:

16 (1) Order the respondent to refrain from receiving any assets from the victim;

17 (2) Order that the respondent may not be alone with the victim without the presence of
18 other individuals specified by the circuit court;

19 (3) Order the respondent to refrain from using undue influence to financially damage the
20 victim;

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

24 (5) Order the respondent to refrain from entering the residence of the victim;

25 (6) Order the respondent to remain away from the place of employment, school, or
26 residence of the victim;

27 (7) Order the respondent not to visit, assault, molest, or otherwise interfere with the victim;

28 (8) Order such other relief as the court deems reasonable under the circumstances;

29 (9) Order either party to pay filing fees and costs of a proceeding pursuant to §53-9-13 of
30 this code.

31 (d) If the circuit court issues an order under this section, the order shall contain only the
32 relief necessary to protect the victim.

33 (e) The circuit court clerk shall serve copies of the final financial exploitation protective
34 order as follows:

35 (1) A copy of the final financial exploitation protective order shall be served on the
36 petitioner, the victim, if applicable, the respondent, the appropriate law-enforcement agency, and
37 any other person the court determines is appropriate, in open court. If any such person is not
38 present at the final financial exploitation protective order hearing, he or she may be served by
39 first-class mail to the person's last known address or by other means in the discretion of the court.

40 (2) In the event the victim of the financial exploitation is a protected person, a copy of the

41 final financial exploitation protective order shall be recorded in the court file of the guardianship
42 or conservatorship case.

43 (f) A copy of the final financial exploitation protective order served on the respondent in
44 accordance with this section or the hearing of the announcement of the court's ruling in court,
45 constitutes actual notice to the respondent of the contents of the final financial exploitation
46 protective order.

47 (g) Service is complete upon mailing.

48 (h) All relief granted in a final financial exploitation protective order shall be effective for
49 the period stated in the order, not to exceed two years.

§53-9-10. Modification and rescission.

1 (a) A financial exploitation protective order may be modified or rescinded during the term
2 of the financial exploitation protective order after:

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

4 (2) A hearing.

5 (b) Modification may include extending the term of the financial exploitation protective
6 order if the order was previously issued for a term of less than the two-year maximum term set
7 forth in §53-9-7 of this code.

§53-9-11. Appeals.

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

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

5 (c) If an appeal is filed under this section, the magistrate court judgment shall remain in
6 effect until superseded by a judgment of the circuit court.

7 (d) Unless the circuit court orders otherwise, modification or enforcement of the magistrate
8 court temporary financial protective order shall be by the magistrate court.

9 (e) The circuit court shall have jurisdiction over any modifications or enforcement of the
10 final financial protective order.

§53-9-12. Statement concerning violations.

1 A temporary financial exploitation protective order and final financial exploitation protective
2 order issued under this article shall state that a violation of the order may result in: (1) Criminal
3 prosecution; and (2) incarceration, fine, or both.

§53-9-13. Penalties.

1 (a) An individual who fails to comply with the relief granted in a temporary financial
2 exploitation protective order or a final financial exploitation protective order entered pursuant to
3 this article is guilty of a misdemeanor and, upon conviction thereof, shall:

4 (1) For a first offense, be fined not more than \$1,000 or confined in jail not more than 90
5 days, or both; and

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

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

§53-9-14. Priority of petitions.

1 Any petition filed in magistrate court or transferred to circuit court pursuant to the
2 provisions of this article shall be given priority over any other civil action before the court, except
3 actions pursuant to §48-27-1 et seq. of this code, §53-8-1 et seq. of this code, and those in which
4 trial is in progress, and shall be docketed immediately upon filing.

§53-9-15. Fees and costs.

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

4 (b) If the petition for a temporary financial exploitation protective order is denied, court
5 costs and fees shall be assessed by the magistrate against the petitioner at the conclusion of the
6 temporary hearing, unless a fee waiver affidavit reflecting inability to pay has been filed or
7 prohibited by federal law.

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

9 (d) Except as provided in subsection (c), court costs and fees shall be assessed by the
10 court at the conclusion of a proceeding, unless a fee waiver affidavit reflecting inability to pay has
11 been filed.

12 (e) No court costs or fees shall be assessed against a petitioner who moves to terminate
13 an order, regardless of whether the court grants or denies the motion.

14 (f) A person seeking waiver of fees, costs, or security pursuant to §59-2-1 et seq. of this
15 code shall execute before the clerk where the matter is pending a fee waiver affidavit which shall
16 be kept confidential. An additional fee waiver affidavit shall be filed whenever the financial
17 condition of the person no longer conforms to the financial condition established by the Supreme
18 Court of Appeals for determining inability to pay fees or whenever an order has been entered
19 directing the filing of a new affidavit.

§53-9-16. Service by law enforcement.

1 Notwithstanding any other provision of this code to the contrary, all law-enforcement
2 officers are hereby authorized and required to serve all pleadings and orders filed or entered
3 pursuant to this article on Sundays and legal holidays. No law-enforcement officer may refuse to
4 serve any pleadings or orders entered pursuant to this article. Law enforcement shall attempt to
5 serve all orders without delay: *Provided*, That service of process shall be attempted within 72
6 hours of law enforcement's receipt of the order. If service is not made, law enforcement shall
7 continue to attempt service on the respondent until proper service is made.

§53-9-17. Rules and forms.

1 (a) The Supreme Court of Appeals may adopt rules and forms to implement the provisions

2 of this article pursuant to §29A-3-1 et seq. of this code.

3 (b) The Supreme Court of Appeals is requested to adopt a form for a petition under this
4 article pursuant to §29A-3-1 et seq. of this code.

5 (c) A petition form shall contain notice to a petitioner that an individual who knowingly
6 provides false information in a petition filed under this subtitle is guilty of a misdemeanor and, on
7 conviction, is subject to the penalties specified in §53-9-4 of this code.

§53-9-18. Limitation on use of information.

1 Nothing in this article authorizes the inclusion of information contained in petition,
2 pleadings or orders provided for by this article to be submitted to any local, state, interstate,
3 national, or international systems of criminal identification pursuant to §15-2-24 of this code.
4 Nothing in this section prohibits the West Virginia State Police from processing information
5 through its Criminal Identification Bureau with respect to any actual charge or conviction of a
6 crime.

§53-9-19. Sealing of records.

1 (a) Either party to a petition filed pursuant to this article may file a written request with the
2 clerk to seal all court records relating to the proceeding.

3 (b) A request for sealing under this section may not be filed within two years after the entry
4 of a final order, or the denial or dismissal of the petition.

5 (c) On the filing of a request for sealing under this section, the court shall schedule a
6 hearing on the request and give notice of the hearing to the parties.

7 (d) After the hearing, the court shall order the sealing of all court records relating to the
8 proceeding if the court finds:

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

- 13 (2) That none of the following are pending at the time of the hearing:
- 14 (A) A temporary financial exploitation protective order or protective order issued against
15 the respondent in a proceeding between the petitioner and the respondent; or
- 16 (B) A criminal charge against the respondent arising from an alleged act described in §53-
17 9-4(a) of this code in which the petitioner is the victim.
- 18 (e) This section does not preclude the following persons from accessing a sealed record
19 for a legitimate reason:
- 20 (1) A law-enforcement officer;
- 21 (2) An attorney who represents or has represented the petitioner or the respondent in a
22 proceeding;
- 23 (3) A prosecuting attorney; or
- 24 (4) An employee of the Department of Health and Human Resources.
- 25 (f) A person not listed in subsection (e) of this section may subpoena or file a motion for
26 access to a record sealed under this section. If the court finds that the person has a legitimate
27 reason for access, the court may grant the person access to the sealed record under the terms
28 and conditions that the court determines.

NOTE: The purpose of this bill is to establish a method for courts to order financial exploitation protection orders; providing for definitions; requiring confidentiality of the proceedings; establishing certain conditions to review or copy proceeding files; providing for persons to file a petition; providing for applicability; establishing the information that must be contained within the petition for relief; creating temporary financial exploitation orders issued by a magistrate; providing for the transfer of a temporary financial exploitation order to circuit court; granting jurisdiction to circuit courts for a transfer; providing for respondent's right to be heard; requiring notice to be served on the respondent; establishing procedures for victims with diminished capacity; establishing the circuit court to issue the final financial exploitation protection order; specifying the forms of relief; requiring the final order be served on the respondent; establishing procedures for modification and rescission of temporary or final financial exploitation orders; establishing rights and procedures for appeal; requiring a statement concerning violations of the temporary or final financial exploitation order; establishing penalties; establishing the priority of petitions in the circuit court; providing for fees and costs; providing for exemptions to fees and costs under certain conditions; requiring service by law enforcement; establishing rule-making authority with the Supreme Court of Appeals; providing limitations

on the use of information from proceedings; and providing for procedures to seal records of proceedings.

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