

**Senate Bill No. 189**

(By Senators Foster, Browning, Fanning, Jenkins, Minard, Tucker,  
Wills, Barnes, K. Facemyer and Stollings)

**Interim  
Bill**

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

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

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

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

7 **ARTICLE 8. PERSONAL SAFETY ORDERS.**

8 **§53-8-1. Definitions.**

9       In this article the following words have the meanings  
10 indicated.

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

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

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

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

3 (5) Place of employment. - - "Place of employment" includes  
4 the grounds, parking areas, outbuildings and common or public  
5 areas in 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  
10 in a petition to have committed an act specified in subsection  
11 (a), 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  
16 grounds" includes the land on which a school is built together  
17 with such other land used by students for play, recreation or  
18 athletic events while attending school. "Extracurricular  
19 activities" means voluntary activities sponsored by a school, a  
20 county board or an organization sanctioned by a county board or  
21 the State Board of Education and include, but are not limited to,  
22 preparation for and involvement in public performances, contests,  
23 athletic competitions, demonstrations, displays, organizations

1 and clubs.

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

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

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

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

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

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

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

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

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

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

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

1 (K) Section eight, article eight-b, chapter sixty-one of  
2 this code;

3 (L) Section nine, article eight-b, chapter sixty-one of this  
4 code;

5 (M) Section ten, article eight-b, chapter sixty-one of this  
6 code;

7 (N) Section two, article six-c, chapter sixty-one of this  
8 code;

9 (O) Section three, article eight-c, chapter sixty-one of  
10 this code;

11 (P) Section three-a, article eight-d, chapter sixty-one of  
12 this code;

13 (Q) Section five, article eight-d, chapter sixty-one of this  
14 code and

15 (R) Section six, article eight-d, chapter sixty-one of this  
16 code.

17 (10) Temporary personal safety order. - - "Temporary  
18 personal safety order" means a personal safety order issued by a  
19 magistrate under section five of this article.

20 **§53-8-2. Confidentially of proceedings.**

21 (a) General Provisions. All orders, findings, pleadings,  
22 recordings, exhibits, transcripts or other documents contained in  
23 a court file are confidential and are not available for public

1 inspection: *Provided*, That unless the file is sealed pursuant to  
2 section eighteen of this article or access is otherwise  
3 prohibited by order, any document in the file shall be available  
4 for inspection and copying by the parties, attorneys of record,  
5 guardians ad litem, designees authorized by a party in writing  
6 and law enforcement. A magistrate or circuit judge may open and  
7 inspect the entire contents of the court file in any case pending  
8 before the magistrate's or judge's court. When sensitive  
9 information has been disclosed in a hearing, pleading or document  
10 filing, the court may order such information sealed in the court  
11 file. Sealed court files shall be opened only pursuant to section  
12 eighteen of this article.

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

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

21       (c) Orders permitting examination or copying of file  
22 contents. Upon written motion, for good cause shown, the court  
23 may enter an order permitting a person who is not permitted

1 access to a court file under subsection (a) to examine and/or  
2 copy documents in a file. Such orders shall set forth specific  
3 findings which demonstrate why the interests of justice  
4 necessitate the examination, copying, or both, and shall specify  
5 the particular documents to be examined and/or copied and the  
6 arrangements under which such examination, copying, or both, may  
7 take place.

8 (d) Obtaining confidential records. Unless both the  
9 petitioner and the respondent waive confidentiality in writing,  
10 records contained in the court file may not be obtained by  
11 subpoena but only by court order and upon full compliance with  
12 statutory and case law requirements.

13 **§53-8-3. Who may file; exclusivity; applicability of article.**

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

16 (1) A person seeking relief under this article for herself  
17 or himself, or

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

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

23 (c) Circumstances where article is inapplicable. -- This

1 article does not apply to a petitioner who is a person eligible  
2 for relief under article twenty-seven, chapter forty-eight of the  
3 code.

4 (d) Right to file. - No person may be refused the right to  
5 file a petition under the provisions of this article. No person  
6 may be denied relief under the provisions of this article if she  
7 or he presents facts sufficient under the provisions of this  
8 article for the relief sought.

9 **§53-8-4. Petition seeking relief.**

10 (a) Underlying acts. -- A petitioner may seek relief under  
11 this article by filing with a magistrate court a petition that  
12 alleges the commission of any of the following acts against the  
13 petitioner by the respondent:

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

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

17 (3) Battery;

18 (4) Assault;

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

20 (6) Kidnapping;

21 (7) Unlawful restraint;

22 (8) Stalking;

23 (9) Trespass; or



1 (10) Malicious destruction of property.

2 (b) Contents. --

3 (1) The petition shall:

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

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

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

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

16 (ii) Each previous and pending action between the parties in  
17 any court; and

18 (iii) The whereabouts of the respondent.

19 (c) Address may be stricken. -- If, in a proceeding under  
20 this article, a petitioner alleges, and the court finds, that the  
21 disclosure of the address of the petitioner would risk further  
22 harm to the petitioner or a member of the petitioner's household,  
23 that address may be stricken from the petition and omitted from

1 all other documents filed with, or transferred to, a court.

2 (d) Facts that may not be considered. -- It is not a  
3 defense to a petition filed pursuant to this article that:

4 (1) The respondent was voluntarily intoxicated;

5 (2) The petitioner acted in self-defense or defense of  
6 another; or

7 (3) The petitioner failed to act in self-defense or defense  
8 of another.

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

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

22 **§53-8-5. Temporary personal safety orders.**

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

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

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

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

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

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

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

20 (E) Order the respondent not to visit, assault, molest or  
21 otherwise interfere with the petitioner and, if the petitioner is  
22 a child, the petitioner's siblings and minors residing in the  
23 household of the petitioner.

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

4 (i) A weapon was used or threatened to be used in the  
5 commission of the offense predicated the petitioning for the  
6 personal safety order;

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

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

11 (G) Direct the respondent to participate in professionally  
12 supervised counseling or, if the parties are amenable, mediation;  
13 and

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

16 (3) If the magistrate issues an order under this section,  
17 the order shall contain only the relief necessary to protect the  
18 petitioner.

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

23 (c) Length of effectiveness. --

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

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

7 (d) Final personal safety order hearing. -- The magistrate  
8 may proceed with a final personal safety order hearing instead of  
9 a temporary personal safety order hearing if:

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

11 (B) The court otherwise has personal jurisdiction over the  
12 respondent; and

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

15 **§53-8-6. Respondent's opportunity to be heard; notice to**  
16 **respondent.**

17 (a) Respondent's opportunity to be heard. -- A respondent  
18 shall have an opportunity to be heard on the question of whether  
19 the magistrate should issue a final personal safety order.

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

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

23 (B) Unless continued for good cause, the final personal

1 safety order hearing shall be held no later than thirty days  
2 after the temporary personal safety order is served on the  
3 respondent.

4 (2) The temporary personal safety order shall include notice  
5 to the respondent:

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

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

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

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

18 **§53-8-7. Personal safety hearing; forms of relief.**

19 (a) Final personal safety order hearing -- Proceeding;  
20 issuance of order. -- If the respondent appears for the final  
21 personal safety order hearing, has been served with a temporary  
22 personal safety order or the respondent waives personal service,  
23 the magistrate:

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

3 (2) May issue a final personal safety order to protect the  
4 petitioner if the court finds by a preponderance of the evidence  
5 that:

6 (A) (i) The respondent has committed an act specified in  
7 subsection (a), section four of this article against the  
8 petitioner; and

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

11 (B) The respondent consents to the entry of a personal  
12 safety order.

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

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

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

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

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

2 (1) The final 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 predicated the petitioning for the



1 personal safety order;

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

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

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

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

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

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

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

22 (2) (A) A copy of the final personal safety order served on  
23 the respondent in accordance with subdivision (1) of this

1 subsection or the hearing the announcement of the court's ruling  
2 in court, constitutes actual notice to the respondent of the  
3 contents of the final personal safety order.

4 (B) Service is complete upon mailing.

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

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

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

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

12 (2) A hearing.

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

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

17 (2) A hearing.

18 **§53-8-9. Appeals.**

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

23 (b) An appeal taken under this section shall be heard de

1 novo in the circuit court.

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

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

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

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

- 12 (1) Criminal prosecution; and  
13 (2) Imprisonment or fine or both.

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

18 **§53-8-11. Penalties.**

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

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

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

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

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

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

19 **§53-8-13. Fees and Costs.**

20           (a) Charges for fees and costs postponed. -- No fees may  
21 be charged for the filing of petitions or other papers, service  
22 of petitions or orders, copies of orders or other costs for  
23 services provided by, or associated with, any proceedings under

1 this article until the matter is brought before the court for  
2 final resolution.

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

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

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

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

18 (f) A person seeking waiver of fees, costs or security  
19 pursuant to section one, article two, chapter fifty-nine of this  
20 code, shall execute before the clerk where the matter is pending  
21 a fee waiver affidavit which shall be kept confidential. An  
22 additional fee waiver affidavit shall be filed whenever the  
23 financial condition of the person no longer conforms to the

1 financial condition established by the Supreme Court of Appeals  
2 for determining inability to pay fees or whenever an order has  
3 been entered directing the filing of a new affidavit.

4 **§53-8-14. Service by law enforcement.**

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

16 **§53-8-15. Rules and forms.**

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

19 (b) Petition form. --

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

22 (2) A petition form shall contain notice to a petitioner  
23 that an individual who knowingly provides false information in a

1 petition filed under this subtitle is guilty of a misdemeanor  
2 and, on conviction is subject to the penalties specified in  
3 section four of this article.

4 **§53-8-16. Limitation on use of information.**

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

14 **§53-8-17. Immunity from liability; rebuttable presumption of**  
15                   **good faith.**

16       A person who seeks relief pursuant to the article who is  
17 acting in good faith is immune from criminal and civil liability  
18 for those actions. There is a rebuttable presumption that the  
19 person was acting in good faith.

20 **§53-8-18. Sealing of records.**

21       (a) Definitions. --

22       (1) In this section the following words have the meanings  
23 indicated.

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

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

8           (4) "Sealing" means:

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

12           (B) With respect to electronic information about a  
13 proceeding on the website maintained by the magistrate court,  
14 circuit court or the Supreme Court of Appeals, removing the  
15 information from the public website; and

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

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

23           (c) Timing. -- A request for sealing under this section may



1 not be filed within two years after the entry of a final order,  
2 or the denial or dismissal of the petition.

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

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

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

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

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

16 (B) That none of the following are pending at the time of  
17 the hearing:

18 (i) A temporary personal safety order or protective order  
19 issued against the respondent in a proceeding between the  
20 petitioner and the respondent; or

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

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

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

4 (A) A law-enforcement officer;

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

7 (C) A prosecuting attorney; or

8 (D) An employee of the Department of Health and Human  
9 Resources.

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

13 (B) If the circuit court finds that the person has a  
14 legitimate reason for access, the court may grant the person  
15 access to the sealed record under the terms and conditions that  
16 the court determines.

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

22 (f) Compliance with order. -- Within sixty days after entry  
23 of an order under subdivision (d) (3) of this section, each

1 custodian of court records that are subject to the order of  
2 sealing shall advise in writing the court and the parties of  
3 compliance with the order.

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

This article is new; therefore, strike-throughs and underscoring have been omitted.