WEST VIRGINIA CODE CHAPTER 53 ARTICLE 8

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§53-8-1. Definitions.

In this article, the following words have the meanings indicated.

"Final personal safety order" means a personal safety order issued by a magistrate under section seven of this article.

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

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

"Military protective order" means a protective order issued by a commanding officer in the United States Armed Forces, the West Virginia National Guard, or the National Guard of any other state against a person under such officer's command.

“Petitioner" means an individual who files a petition under section four of this article.

"Place of employment" includes the grounds, parking areas, outbuildings and common or public areas in or surrounding the place of employment.

"Residence" includes the yard, grounds, outbuildings and common or public areas in or surrounding the residence.

"Respondent" means an individual alleged in a petition to have committed an act specified in §53-8-4(a) of this code against a petitioner.

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

"Sexual offense" means the commission of the offenses set out in any of the following sections:

(A) §61-8-9 of this code;

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(B) §61-8-12 of this code;

(C) §61-8A-2 of this code;

(D) §61-8A-4 of this code;

(E) §61-8A-5 of this code;

(F) §61-8B-3 of this code;

(G) §61-8B-4 of this code;

(H) §61-8B-5 of this code;

(I) §61-8B-7 of this code;

(J) §61-8B-8 of this code;

(K) §61-8B-9 of this code;

(L) §61-8C-2 of this code;

(M) §61-8C-3 of this code;

(N) §61-8D-3a of this code;

(O) §61-8D-5 of this code; and

(P) §61-8D-6 of this code.

"Temporary personal safety order" means a personal safety order issued by a magistrate under section five of this article.

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§53-8-2. Confidentially of proceedings.

(a) General Provisions. -- All orders, findings, pleadings, recordings, exhibits, transcripts or other documents contained in a court file are confidential and are not available for public inspection: Provided, That unless the file is sealed pursuant to section seventeen of this article or access is otherwise prohibited by order, any document in the file shall be available for inspection and copying by the parties, attorneys of record, guardians ad litem, designees authorized by a party in writing and law enforcement. A magistrate or circuit judge may open and inspect the entire contents of the court file in any case pending before the magistrate's or judge's court. When sensitive information has been disclosed in a hearing, pleading or document filing, the court may order such information sealed in the court file. Sealed court files shall be opened only pursuant to section seventeen of this article.

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

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

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

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

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

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

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

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

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

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

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

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§53-8-4. Petition seeking relief.

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

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

(2) A violation of subsection (a), section nine-a, article two, chapter sixty-one of this code; or

(3) repeated credible threats of bodily injury when the person making the threats knows or has reason to know that the threats cause another person to reasonably fear for his or her safety.

(b) Contents. –

The petition shall:

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

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

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

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

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

(C) The whereabouts of the respondent.

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

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

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

(f) Venue. – The action may be heard in the county in which any underlying act occurred for which relief is sought in the petition, in the county in which the respondent is living, or in the county in which the petitioner is living, either temporarily or permanently.

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

(a) Authorized; forms of relief available. —

(1) If after a hearing on a petition, whether ex parte or otherwise, a magistrate finds that there is reasonable cause to believe that the respondent has committed an act specified in §53-8-4(a) of this code, against the petitioner, the magistrate shall issue a temporary personal safety order to protect the petitioner.

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

(A) Order the respondent to refrain from committing or threatening to commit an act specified in §53-8-4(a) of this code against the petitioner;

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

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

(D) Order the respondent to remain away from the place of employment, school or residence of the petitioner: *Provided*, That when the respondent is alleged to have committed an act specified in §53-8-4(a)(2) of this code, the magistrate may not prohibit the respondent from entering the respondent's place of employment;

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

(F) The court, in its discretion, may prohibit a respondent from possessing a firearm as defined in §61-7-7 of this code if:

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

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

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

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

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

(4) For purposes of issuing a temporary personal safety order under this section, a

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magistrate may treat a military protective order as reasonable cause to believe that the respondent has committed an act specified in §53-8-4(a) of this code against the petitioner if the military protective order:

(A) Is still in effect and has not been terminated; and

(B) Was issued against the respondent because the respondent committed an act specified in §53-8-4(a) of this code against the petitioner.

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

(c) Length of effectiveness. —

(1) The temporary personal safety order shall be effective for not more than 10 days after service of the order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Final personal safety order hearing. --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Personal safety order - Service. --

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

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

(B) Service is complete upon mailing.

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

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§53-8-8. Modification and rescission.

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

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

(2) A hearing.

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

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§53-8-9. Appeals.

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

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

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

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

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§53-8-10. Statement concerning violations.

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

(1) Criminal prosecution; and

(2) Incarceration, fine or both.

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§53-8-11. Penalties.

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

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

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

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

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§53-8-12. Priority of petitions.

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

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§53-8-13. Fees and costs.

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

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

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

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

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

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

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§53-8-14. Service by law enforcement.

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

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§53-8-15. Rules and forms.

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

(b) Petition form. --

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

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

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

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

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§53-8-17. Sealing of records.

(a) Definitions. —

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

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

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

(4) "Sealing" means:

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

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

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

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

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

(d) Notice, hearing and findings. —

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

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

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

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

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the petitioner and the community; and

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

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

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

(e) Access to a sealed record. —

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

(A) A law-enforcement officer;

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

(C) A prosecuting attorney; or

(D) An employee of the Department of Human Services and the Department of Health.

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

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

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

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

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