

**Senate Bill No. 484**

(By Senators Palumbo, Laird, Tucker, Edgell, Wills, Wells,  
Kessler (Mr. President), Klempa, Jenkins, Beach and Yost)

[Introduced February 2, 2012; referred to the Committee on Health  
and Human Resources; and then to the Committee on Finance.]

**FISCAL  
NOTE**

A BILL to repeal §49-5-21 of the Code of West Virginia, 1931, as  
amended; to repeal §49-6-5a of said code; to amend and reenact  
§49-1-3 of said code; to amend and reenact §49-5-13 of said  
code; to amend and reenact §49-5D-3 and §49-5D-3a of said  
code; to amend said code by adding thereto two new sections,  
designated §49-5D-3b and §49-5D-3c; to amend and reenact §49-  
6-2, §49-6-3, §49-6-5, §49-6-6, §49-6-8 and §49-6-12 of said  
code; to amend said code by adding thereto a new section,  
designated §49-6-9a; to amend and reenact §49-6D-3 of said  
code; to amend and reenact §49-7-1 of said code; and to amend  
said code by adding thereto a new section, designated §49-7-  
36, all relating to child welfare; defining "court appointed  
special advocate program"; providing when a juvenile is  
ordered into out-of-state placement, the reasons why the

1 juvenile was not placed in-state be included in the court  
2 order; providing a process for multidisciplinary treatment  
3 planning in cases involving child abuse and neglect; providing  
4 a process for multidisciplinary treatment planning in cases  
5 involving status offense or delinquency; increasing the  
6 continuing education hours required for attorneys appointed in  
7 child abuse and neglect cases; providing that reasonable  
8 efforts to preserve the family are not required when a person  
9 is required by state or federal law to register with a sex  
10 offender registry; providing that the court may modify a  
11 dispositional order when it finds a material change of  
12 circumstances has occurred and such modification is in the  
13 child's best interests; clarifying that the circuit court of  
14 origin has exclusive jurisdiction over placement of a child in  
15 a child abuse and neglect case; providing a process for  
16 permanency hearings and permanent placement reviews;  
17 authorizing family court to order a child be taken into  
18 emergency custody under certain circumstances and providing a  
19 process for such; providing that any combination of  
20 improvement periods cannot cause a child to be in foster care  
21 more than fifteen months of the most recent twenty-two months  
22 unless the court finds that it is in the child's best  
23 interests; providing guidelines for unified child and family

1 case plans; confidentiality of records; and requiring a  
2 quarterly status review hearing and yearly permanency hearings  
3 for transitioning adults.

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

5 That §49-5-21 of the Code of West Virginia, 1931, as amended,  
6 be repealed; that §49-6-5a of said code be repealed; that §49-1-3  
7 of said code be amended and reenacted; that §49-5-13 of said code  
8 be amended and reenacted; that §49-5D-3 and §49-5D-3a of said code  
9 be amended and enacted; that said code be amended by adding thereto  
10 two new sections, designated §49-5D-3b and §49-5D-3c; that §49-6-2,  
11 §49-6-3, §49-6-5, §49-6-6, §49-6-8 and §49-6-12 of said code be  
12 amended and reenacted; that said code be amended by adding thereto  
13 a new section, designated §49-6-9a; that §49-6D-3 of said code be  
14 amended and reenacted; that §49-7-1 of said code be amended and  
15 reenacted; and that said code be amended by adding thereto a new  
16 section, designated §49-7-36, all to read as follows:

17 **ARTICLE 1. PURPOSES AND DEFINITIONS.**

18 **§49-1-3. Definitions relating to abuse and neglect.**

19 (1) "Abused child" means a child whose health or welfare is  
20 harmed or threatened by:

21 (A) A parent, guardian or custodian who knowingly or  
22 intentionally inflicts, attempts to inflict or knowingly allows  
23 another person to inflict, physical injury or mental or emotional

1 injury, upon the child or another child in the home; or

2 (B) Sexual abuse or sexual exploitation; or

3 (C) The sale or attempted sale of a child by a parent,  
4 guardian or custodian in violation of section sixteen, article  
5 four, chapter forty-eight of this code; or

6 (D) Domestic violence as defined in section two hundred two,  
7 article twenty-seven, chapter forty-eight of this code.

8 In addition to its broader meaning, physical injury may  
9 include an injury to the child as a result of excessive corporal  
10 punishment.

11 (2) "Abusing parent" means a parent, guardian or other  
12 custodian, regardless of his or her age, whose conduct, as alleged  
13 in the petition charging child abuse or neglect, has been adjudged  
14 by the court to constitute child abuse or neglect.

15 (3) "Battered parent" means a parent, guardian or other  
16 custodian who has been judicially determined not to have condoned  
17 the abuse or neglect and has not been able to stop the abuse or  
18 neglect of the child or children due to being the victim of  
19 domestic violence as defined by section two hundred two, article  
20 twenty-seven, chapter forty-eight of this code, which domestic  
21 violence was perpetrated by the person or persons determined to  
22 have abused or neglected the child or children.

23 (4) "Child abuse and neglect" or "child abuse or neglect"

1 means physical injury, mental or emotional injury, sexual abuse,  
2 sexual exploitation, sale or attempted sale or negligent treatment  
3 or maltreatment of a child by a parent, guardian or custodian who  
4 is responsible for the child's welfare, under circumstances which  
5 harm or threaten the health and welfare of the child.

6 (5) "Child abuse and neglect services" means social services  
7 which are directed toward:

8 (A) Protecting and promoting the welfare of children who are  
9 abused or neglected;

10 (B) Identifying, preventing and remedying conditions which  
11 cause child abuse and neglect;

12 (C) Preventing the unnecessary removal of children from their  
13 families by identifying family problems and assisting families in  
14 resolving problems which could lead to a removal of children and a  
15 breakup of the family;

16 (D) In cases where children have been removed from their  
17 families, providing services to the children and the families so as  
18 to reunify such children with their families or some portion  
19 thereof;

20 (E) Placing children in suitable adoptive homes when  
21 reunifying the children with their families, or some portion  
22 thereof, is not possible or appropriate; and

23 (F) Assuring the adequate care of children who have been

1 placed in the custody of the department or third parties.

2 (6) "Child advocacy center" means a community-based  
3 organization that is a member in good standing with the West  
4 Virginia Child Abuse Network, Inc., and is working to implement the  
5 following program components:

6 (A) Child-appropriate/child-friendly facility: A child  
7 advocacy center provides a comfortable, private, child-friendly  
8 setting that is both physically and psychologically safe for  
9 clients.

10 (B) Multidisciplinary team (MDT): A multidisciplinary team for  
11 response to child abuse allegations includes representation from  
12 the following: Law enforcement; child protective services;  
13 prosecution; mental health; medical; victim advocacy; child  
14 advocacy center.

15 (C) Organizational capacity: A designated legal entity  
16 responsible for program and fiscal operations has been established  
17 and implements basic sound administrative practices.

18 (D) Cultural competency and diversity: The CAC promotes  
19 policies, practices and procedures that are culturally competent.  
20 Cultural competency is defined as the capacity to function in more  
21 than one culture, requiring the ability to appreciate, understand  
22 and interact with members of diverse populations within the local  
23 community.

1           (E) Forensic interviews: Forensic interviews are conducted in  
2 a manner which is of a neutral, fact finding nature and coordinated  
3 to avoid duplicative interviewing.

4           (F) Medical evaluation: Specialized medical evaluation and  
5 treatment are to be made available to CAC clients as part of the  
6 team response, either at the CAC or through coordination and  
7 referral with other specialized medical providers.

8           (G) Therapeutic intervention: Specialized mental health  
9 services are to be made available as part of the team response,  
10 either at the CAC or through coordination and referral with other  
11 appropriate treatment providers.

12           (H) Victim support/advocacy: Victim support and advocacy are  
13 to be made available as part of the team response, either at the  
14 CAC or through coordination with other providers, throughout the  
15 investigation and subsequent legal proceedings.

16           (I) Case review: Team discussion and information sharing  
17 regarding the investigation, case status and services needed by the  
18 child and family are to occur on a routine basis.

19           (J) Case tracking: CACs must develop and implement a system  
20 for monitoring case progress and tracking case outcomes for team  
21 components: *Provided*, That a child advocacy center may establish  
22 a safe exchange location for children and families who have a  
23 parenting agreement or an order providing for visitation or custody

1 of the children that require a safe exchange location.

2 (7) "Court Appointed Special Advocate Program" means a  
3 community organization that screens, trains and supervises CASA  
4 volunteers to advocate for the best interests of children who are  
5 involved in abuse and neglect proceedings. Court Appointed Special  
6 Advocate Programs will be operated under the following guidelines:

7 (A) Standards: CASA Programs shall be members in good standing  
8 with the West Virginia Court Appointed Special Advocate  
9 Association, Inc., and the National Court Appointed Special  
10 Advocates Association and adhere to all standards set forth by  
11 these entities.

12 (B) Organizational capacity: A designated legal entity  
13 responsible for program and fiscal operations has been established  
14 and implements basic sound administrative practice.

15 (C) Cultural competency and diversity: CASA programs promote  
16 policies, practices and procedures that are culturally competent.  
17 Cultural competency is defined as the capacity to function in more  
18 than one culture, requiring the ability to appreciate, understand  
19 and interact with members of diverse populations within the local  
20 community.

21 (D) Case management: CASA programs must utilize a uniform case  
22 management system to monitor case progress and track outcomes.

23 (E) Case review: CASA volunteers meet with CASA staff on a  
24 routine basis to discuss case status and outcomes.



1        (F) Training: Court Appointed Special Advocates shall serve as  
2 volunteers without compensation and shall receive training  
3 consistent with state and nationally developed standards.

4        (G) Volunteer Immunity: A court appointed special advocate  
5 volunteer is immune from civil liability to the full extent  
6 provided in the federal Volunteer Protection Act of 1997.

7        ~~(7)~~ (8) "Imminent danger to the physical well-being of the  
8 child" means an emergency situation in which the welfare or the  
9 life of the child is threatened. Such emergency situation exists  
10 when there is reasonable cause to believe that any child in the  
11 home is or has been sexually abused or sexually exploited, or  
12 reasonable cause to believe that the following conditions threaten  
13 the health or life of any child in the home:

14        (A) Nonaccidental trauma inflicted by a parent, guardian,  
15 custodian, sibling or a babysitter or other caretaker;

16        (B) A combination of physical and other signs indicating a  
17 pattern of abuse which may be medically diagnosed as battered child  
18 syndrome;

19        (C) Nutritional deprivation;

20        (D) Abandonment by the parent, guardian or custodian;

21        (E) Inadequate treatment of serious illness or disease;

22        (F) Substantial emotional injury inflicted by a parent,  
23 guardian or custodian;

24        (G) Sale or attempted sale of the child by the parent,

1 guardian or custodian; or

2 (H) The parent, guardian or custodian abuse of alcohol, or  
3 drugs or other controlled substance as defined in section one-  
4 hundred one, article one, chapter sixty-a of this code, has  
5 impaired his or her parenting skills to a degree as to pose an  
6 imminent risk to a child's health or safety.

7 ~~(8)~~ (9) "Legal guardianship" means the permanent relationship  
8 between a child and caretaker, established by order of the circuit  
9 court having jurisdiction over the child, pursuant to the  
10 provisions of this chapter and chapter forty-eight of this code.

11 ~~(9)~~ (10) "Multidisciplinary team" means a group of professionals  
12 and paraprofessionals representing a variety of disciplines who  
13 interact and coordinate their efforts to identify, diagnose and  
14 treat specific cases of child abuse and neglect. Multidisciplinary  
15 teams may include, but are not limited to, medical, educational,  
16 child care and law-enforcement personnel, social workers,  
17 psychologists and psychiatrists. Their goal is to pool their  
18 respective skills in order to formulate accurate diagnoses and to  
19 provide comprehensive coordinated treatment with continuity and  
20 follow-up for both parents and children. "Community team" means a  
21 multidisciplinary group which addresses the general problem of  
22 child abuse and neglect in a given community and may consist of  
23 several multidisciplinary teams with different functions.

24 ~~(10)~~ (11) (A) "Neglected child" means a child:

1 (i) Whose physical or mental health is harmed or threatened by  
2 a present refusal, failure or inability of the child's parent,  
3 guardian or custodian to supply the child with necessary food,  
4 clothing, shelter, supervision, medical care or education, when  
5 such refusal, failure or inability is not due primarily to a lack  
6 of financial means on the part of the parent, guardian or  
7 custodian; or

8 (ii) Who is presently without necessary food, clothing,  
9 shelter, medical care, education or supervision because of the  
10 disappearance or absence of the child's parent or custodian;

11 (B) "Neglected child" does not mean a child whose education is  
12 conducted within the provisions of section one, article eight,  
13 chapter eighteen of this code.

14 ~~(11)~~ (12) "Parent" means an individual defined as a parent by  
15 law or on the basis of a biological relationship, marriage to a  
16 person with a biological relationship, legal adoption or other  
17 recognized grounds.

18 ~~(12)~~ (13) "Parental rights" means any and all rights and  
19 duties regarding a parent to a minor child, including, but not  
20 limited to, custodial rights and visitational rights and rights to  
21 participate in the decisions affecting a minor child.

22 ~~(13)~~ (14) "Parenting skills" means a parent's competencies in  
23 providing physical care, protection, supervision and psychological  
24 support appropriate to a child's age and state of development.

1       ~~(14)~~ (15) "Sexual abuse" means:

2       (A) As to a child who is less than sixteen years of age, any  
3 of the following acts which a parent, guardian or custodian shall  
4 engage in, attempt to engage in, or knowingly procure another  
5 person to engage in, with such child, notwithstanding the fact that  
6 the child may have willingly participated in such conduct or the  
7 fact that the child may have suffered no apparent physical injury  
8 or mental or emotional injury as a result of such conduct:

9       (i) Sexual intercourse;

10       (ii) Sexual intrusion; or

11       (iii) Sexual contact;

12       (B) As to a child who is sixteen years of age or older, any of  
13 the following acts which a parent, guardian or custodian shall  
14 engage in, attempt to engage in, or knowingly procure another  
15 person to engage in, with such child, notwithstanding the fact that  
16 the child may have consented to such conduct or the fact that the  
17 child may have suffered no apparent physical injury or mental or  
18 emotional injury as a result of such conduct:

19       (i) Sexual intercourse;

20       (ii) Sexual intrusion; or

21       (iii) Sexual contact;

22       (C) Any conduct whereby a parent, guardian or custodian  
23 displays his or her sex organs to a child, or procures another  
24 person to display his or her sex organs to a child, for the purpose

1 of gratifying the sexual desire of the parent, guardian or  
2 custodian, of the person making such display, or of the child, or  
3 for the purpose of affronting or alarming the child.

4 ~~(15)~~ (16) "Sexual contact" means sexual contact as that term  
5 is defined in section one, article eight-b, chapter sixty-one of  
6 this code.

7 ~~(16)~~ (17) "Sexual exploitation" means an act whereby:

8 (A) A parent, custodian or guardian, whether for financial  
9 gain or not, persuades, induces, entices or coerces a child to  
10 engage in sexually explicit conduct as that term is defined in  
11 section one, article eight-c, chapter sixty-one of this code;

12 (B) A parent, guardian or custodian persuades, induces,  
13 entices or coerces a child to display his or her sex organs for the  
14 sexual gratification of the parent, guardian, custodian or a third  
15 person, or to display his or her sex organs under circumstances in  
16 which the parent, guardian or custodian knows such display is  
17 likely to be observed by others who would be affronted or alarmed.

18 ~~(17)~~ (18) "Sexual intercourse" means sexual intercourse as  
19 that term is defined in section one, article eight-b, chapter  
20 sixty-one of this code.

21 ~~(18)~~ (19) "Sexual intrusion" means sexual intrusion as that  
22 term is defined in section one, article eight-b, chapter sixty-one  
23 of this code.

24 ~~(19)~~ (20) "Placement" means any temporary or permanent

1 placement of a child who is in the custody fo the state in any  
2 foster home, group home or other facility or residence.

3 ~~(20)~~ (21) "Serious physical abuse" means bodily injury which  
4 creates a substantial risk of death, which causes serious or  
5 prolonged disfigurement, prolonged impairment of health or  
6 prolonged loss or impairment of the function of any bodily organ.

7 ~~(21)~~ (22) "Siblings" means children who have at least one  
8 biological parent in common or who have been legally adopted by the  
9 same parents or parent.

10 ~~(22)~~ (23) "Time-limited reunification services" means  
11 individual, group and family counseling, inpatient, residential or  
12 outpatient substance abuse treatment services, mental health  
13 services, assistance to address domestic violence, services  
14 designed to provide temporary child care and therapeutic services  
15 for families, including crisis nurseries and transportation to or  
16 from any such services, provided during fifteen of the most recent  
17 twenty-two months a child has been in foster care, as determined by  
18 the earlier date of the first judicial finding that the child is  
19 subjected to abuse or neglect, or the date which is sixty days  
20 after the child is removed from home.

21 **ARTICLE 5. JUVENILE PROCEEDINGS.**

22 **§49-5-13. Disposition of juvenile delinquents; appeal.**

23 (a) In aid of disposition of juvenile delinquents, the  
24 juvenile probation officer assigned to the court shall, upon

1 request of the court, make an investigation of the environment of  
2 the juvenile and the alternative dispositions possible. The court,  
3 upon its own motion, or upon request of counsel, may order a  
4 psychological examination of the juvenile. The report of such  
5 examination and other investigative and social reports shall not be  
6 made available to the court until after the adjudicatory hearing.  
7 Unless waived, copies of the report shall be provided to counsel  
8 for the petitioner and counsel for the juvenile no later than  
9 seventy-two hours prior to the dispositional hearing.

10 (b) Following the adjudication, the court shall conduct the  
11 dispositional proceeding, giving all parties an opportunity to be  
12 heard. In disposition the court shall not be limited to the relief  
13 sought in the petition and shall, in electing from the following  
14 alternatives, consider the best interests of the juvenile and the  
15 welfare of the public:

16 (1) Dismiss the petition;

17 (2) Refer the juvenile and the juvenile's parent or custodian  
18 to a community agency for needed assistance and dismiss the  
19 petition;

20 (3) Upon a finding that the juvenile is in need of extra-  
21 parental supervision: (A) Place the juvenile under the supervision  
22 of a probation officer of the court or of the court of the county  
23 where the juvenile has his or her usual place of abode or other  
24 person while leaving the juvenile in custody of his or her parent

1 or custodian; and (B) prescribe a program of treatment or therapy  
2 or limit the juvenile's activities under terms which are reasonable  
3 and within the child's ability to perform, including participation  
4 in the litter control program established pursuant to section  
5 three, article fifteen-a, chapter twenty-two of this code or other  
6 appropriate programs of community service;

7       (4) Upon a finding that a parent or custodian is not willing  
8 or able to take custody of the juvenile, that a juvenile is not  
9 willing to reside in the custody of his or her parent or custodian  
10 or that a parent or custodian cannot provide the necessary  
11 supervision and care of the juvenile, the court may place the  
12 juvenile in temporary foster care or temporarily commit the  
13 juvenile to the department or a child welfare agency. The court  
14 order shall state that continuation in the home is contrary to the  
15 best interest of the juvenile and why; and whether or not the  
16 department made a reasonable effort to prevent the placement or  
17 that the emergency situation made such efforts unreasonable or  
18 impossible. Whenever the court transfers custody of a youth to the  
19 department, an appropriate order of financial support by the  
20 parents or guardians shall be entered in accordance with section  
21 five, article seven of this chapter and guidelines promulgated by  
22 the Supreme Court of Appeals;

23       (5) Upon a finding that the best interests of the juvenile or  
24 the welfare of the public require it, and upon an adjudication of



1 delinquency pursuant to subdivision (1), section four, article one  
2 of this chapter, the court may commit the juvenile to the custody  
3 of the Director of the Division of Juvenile Services for placement  
4 in a juvenile services facility for the treatment, instruction and  
5 rehabilitation of juveniles: *Provided*, That the court maintains  
6 discretion to consider alternative sentencing arrangements.  
7 Notwithstanding any provision of this code to the contrary, in the  
8 event that the court determines that it is in the juvenile's best  
9 interests or required by the public welfare to place the juvenile  
10 in the custody of the Division of Juvenile Services, the court  
11 shall provide the Division of Juvenile Services with access to all  
12 relevant court orders and records involving the underlying offense  
13 or offenses for which the juvenile was adjudicated delinquent,  
14 including sentencing and presentencing reports and evaluations, and  
15 provide the Division with access to school records, psychological  
16 reports and evaluations, medical reports and evaluations or any  
17 other such records as may be in the court's possession as would  
18 enable the Division of Juvenile Services to better assess and  
19 determine the appropriate counseling, education and placement needs  
20 for the juvenile offender. Commitments shall not exceed the maximum  
21 term for which an adult could have been sentenced for the same  
22 offense and any such maximum allowable sentence to be served in a  
23 juvenile correctional facility may take into account any time  
24 served by the juvenile in a detention center pending adjudication,

1 disposition or transfer. The order shall state that continuation in  
2 the home is contrary to the best interests of the juvenile and why;  
3 and whether or not the state department made a reasonable effort to  
4 prevent the placement or that the emergency situation made such  
5 efforts unreasonable or impossible; or

6 (6) After a hearing conducted under the procedures set out in  
7 subsections (c) and (d), section four, article five, chapter  
8 twenty-seven of this code, commit the juvenile to a mental health  
9 facility in accordance with the juvenile's treatment plan; the  
10 Director of the mental health facility may release a juvenile and  
11 return him or her to the court for further disposition. The order  
12 shall state that continuation in the home is contrary to the best  
13 interests of the juvenile and why; and whether or not the state  
14 department made a reasonable effort to prevent the placement or  
15 that the emergency situation made such efforts unreasonable or  
16 impossible.

17 (c) In any case in which the court decides to order the  
18 juvenile placed in an out-of-state facility or program, it shall  
19 set forth in the order directing the placement the reasons the  
20 juvenile was not placed in an in-state facility or program.

21 ~~(c)~~ (d) The disposition of the juvenile shall not be affected  
22 by the fact that the juvenile demanded a trial by jury or made a  
23 plea of denial. Any dispositional order is subject to appeal to the  
24 Supreme Court of Appeals.

1       ~~(d)~~ (e) Following disposition, the court shall inquire whether  
2 the juvenile wishes to appeal and the response shall be  
3 transcribed; a negative response shall not be construed as a  
4 waiver. The evidence shall be transcribed as soon as practicable  
5 and made available to the juvenile or his or her counsel, if the  
6 same is requested for purposes of further proceedings. A judge may  
7 grant a stay of execution pending further proceedings.

8       ~~(e)~~ (f) Notwithstanding any other provision of this code to  
9 the contrary, if a juvenile charged with delinquency under this  
10 chapter is transferred to adult jurisdiction and there tried and  
11 convicted, the court may make its disposition in accordance with  
12 this section in lieu of sentencing such person as an adult.

13 **ARTICLE 5D. MULTIDISCIPLINARY TEAMS.**

14 **§49-5D-3. Multidisciplinary treatment planning process.**

15       (a) (1) A multidisciplinary treatment planning process for  
16 cases initiated pursuant to articles five and six of this chapter  
17 shall be established within each county of the state, either  
18 separately or in conjunction with a contiguous county, by the  
19 secretary of the department with advice and assistance from the  
20 prosecutor's advisory council as set forth in section four, article  
21 four, chapter seven of this code. The Division of Juvenile Services  
22 shall establish a similar treatment planning process for  
23 delinquency cases in which the juvenile has been committed to ~~the~~  
24 its custody of the director of the division custody, including

1 those cases in which the juvenile has been committed for  
2 examination and diagnosis.

3 (2) The provisions of this section do not require a  
4 multidisciplinary team meeting to be held prior to temporarily  
5 placing a child or juvenile out-of-home under exigent circumstances  
6 or upon a court order placing a juvenile in a facility operated by  
7 the Division of Juvenile Services.

8 ~~(2) (b) The case manager in the Department of Health and Human~~  
9 ~~Resources for the child, family or juvenile or the case manager in~~  
10 ~~the Division of Juvenile Services for a juvenile shall convene a~~  
11 ~~treatment team in each case when it is required pursuant to this~~  
12 ~~article. Treatment teams shall assess, plan and implement a~~  
13 ~~comprehensive, individualized service plan for children who are~~  
14 ~~victims of abuse or neglect and their families when a judicial~~  
15 ~~proceeding has been initiated involving the child or children for~~  
16 ~~juveniles and their families involved in status offense or~~  
17 ~~delinquency proceedings when, in a status offense proceeding, the~~  
18 ~~court refers the juvenile for services pursuant to sections eleven~~  
19 ~~and eleven-a, article five of this chapter and when, in a~~  
20 ~~delinquency proceeding, the court is considering placing the~~  
21 ~~juvenile in the department's custody or placing the juvenile out of~~  
22 ~~home at the department's expense pursuant to the provisions of~~  
23 ~~section thirteen of said article. In any such status offense or~~  
24 ~~delinquency case, the juvenile probation officer shall notify the~~

~~1 local office of the Department of Health and Human Resources and  
2 the Division of Juvenile Services at least five working days before  
3 the court proceeding in order to allow the multidisciplinary  
4 treatment team to convene and develop a comprehensive  
5 individualized service plan for the child: *Provided*, That such  
6 notice is not required in cases where the child is already in state  
7 custody or there exist exigent circumstances which justify taking  
8 the child immediately into custody without a judicial proceeding.  
9 In developing an individualized service plan for a child, the team  
10 shall utilize a uniform comprehensive assessment of the child. The  
11 department shall adopt a standard uniform comprehensive assessment  
12 instrument or protocol to be used by treatment teams.~~

13       (3) Prior to disposition, in each case in which a treatment  
14 planning team has been convened, the team shall advise the court as  
15 to the types of services the team has determined are needed and the  
16 type of placement, if any, which will best serve the needs of the  
17 child. If the team determines that an out-of-home placement will  
18 best serve the needs of the child, the team shall first consider  
19 placement at facilities or programs located within the state. The  
20 team may only recommend placement in an out-of-state facility if it  
21 concludes, after considering the best interests and overall needs  
22 of the child, that there are no available and suitable in-state  
23 facilities which can satisfactorily meet the specific needs of the  
24 child.

1       ~~(b) Each treatment team shall be convened by the child's or~~  
2 ~~family's case manager in the Department of Health and Human~~  
3 ~~Resources or the Division of Juvenile Services if the juvenile has~~  
4 ~~been ordered into its custody for examination and diagnosis~~  
5 ~~pursuant to section thirteen, article five of this chapter. The~~  
6 ~~treatment team shall consist of the child's custodial parent or~~  
7 ~~parents, guardian or guardians, other immediate family members, the~~  
8 ~~attorney or attorneys representing the child, the parent or parents~~  
9 ~~of the child, the child's attorney, the guardian ad litem, if any,~~  
10 ~~the prosecuting attorney or his or her designee, a member of a~~  
11 ~~child advocacy center when the child has been processed through the~~  
12 ~~child advocacy center program(s) and, where appropriate to the~~  
13 ~~particular case under consideration and available, a court-~~  
14 ~~appointed special advocate, a member of a child advocacy center, an~~  
15 ~~appropriate school official and any other person or an agency~~  
16 ~~representative who may assist in providing recommendations for the~~  
17 ~~particular needs of the child and family. The child may participate~~  
18 ~~in multidisciplinary treatment team meetings if such is deemed~~  
19 ~~appropriate by the multidisciplinary treatment team. For purposes~~  
20 ~~of delinquency proceedings, the juvenile probation officer shall be~~  
21 ~~a member of the treatment team. Any person authorized by the~~  
22 ~~provisions of this chapter to convene a multidisciplinary team~~  
23 ~~meeting may seek and receive an order of the circuit court setting~~  
24 ~~such meeting and directing attendance. Members of the~~

1 multidisciplinary team may participate in team meetings by  
2 telephone or video conferencing: ~~Provided, That a member of a child~~  
3 ~~advocacy center should participate in any case when appropriate to~~  
4 ~~the particular case under consideration. Provided, That the~~  
5 provisions of this subsection do not prevent the respective  
6 agencies from designating a person other than the case manager as  
7 a facilitator for treatment team meetings.

8 (c) The treatment team shall coordinate its activities and  
9 membership with local family resource networks and coordinate with  
10 other local and regional child and family service planning  
11 committees to assure the efficient planning and delivery of child  
12 and family services on a local and regional level.

13 (d) ~~State, county and local agencies shall provide the~~  
14 ~~multidisciplinary treatment teams with any information requested in~~  
15 ~~writing by the team as allowable by law or upon receipt of a~~  
16 ~~certified copy of the circuit court's order directing said agencies~~  
17 ~~to release information in its possession relating to the child. The~~  
18 ~~team shall assure that all information received and developed in~~  
19 ~~connection with the provisions of this article remain confidential.~~  
20 ~~For purposes of this section, the term "confidential" shall be~~  
21 ~~construed in accordance with the provisions of section one, article~~  
22 ~~seven of this chapter. The multidisciplinary treatment team shall~~  
23 be afforded access to information in the possession of the  
24 Department of Health and Human Services, Division of Juvenile

1 Services, law-enforcement agencies, and other state, county, and  
2 local agencies; and the agencies shall cooperate in the sharing of  
3 information, as may be provided in sections three(d) and six,  
4 article five-D and section one, article seven, all of chapter  
5 forty-nine, and any other relevant provision of law. Any  
6 multidisciplinary team member who acquires confidential information  
7 shall not disclose such information except as permitted by the  
8 provisions of this code or court rules.

9 ~~(e) Nothing in this section may be construed to require a~~  
10 ~~multidisciplinary team meeting to be held prior to temporarily~~  
11 ~~placing a child out of home under exigent circumstances or upon a~~  
12 ~~court order placing the juvenile in a juvenile facility operated by~~  
13 ~~the Division of Juvenile Services.~~

14 **§49-5D-3a. Recommendation of team to the court; hearing**  
15 **requirement; required findings.**

16 (a) In any case in which a multidisciplinary treatment team  
17 develops an individualized service plan for a child or family  
18 pursuant to the provisions ~~of section three~~ of this article, the  
19 court shall review the proposed service plan to determine if  
20 implementation of the plan is in the child's best interests. If the  
21 multidisciplinary team cannot agree on a plan or if the court  
22 determines not to adopt the team's recommendations, it shall, upon  
23 motion or sua sponte, schedule and hold within ten days of such  
24 determination, and prior to the entry of an order placing the child



1 in the custody of the department or in an out-of-home setting, a  
2 hearing to consider evidence from the team as to its rationale for  
3 the proposed service plan. If, after a hearing held pursuant to the  
4 provisions of this section, the court does not adopt the teams's  
5 recommended service plan, it shall make specific written findings  
6 as to why the team's recommended service plan was not adopted.

7 (b) In any case in which the court decides to order the child  
8 placed in an out-of-state facility or program it shall set forth in  
9 the order directing the placement the reasons why the child was not  
10 placed in an in-state facility or program.

11 (c) Any member of the multidisciplinary treatment team who  
12 disagrees with recommendations of the team may inform the court of  
13 his or her own recommendations and objections to the team's  
14 recommendations. The recommendations and objections of the  
15 dissenting team member may be made in a hearing on the record, made  
16 in writing and served upon each team member and filed with the  
17 court, and indicated in the case plan, or both made in writing and  
18 indicated in the case plan. Upon receiving objections, the court  
19 will conduct a hearing pursuant to paragraph (a) of this section.

20 **§49-5D-3b. Multidisciplinary treatment planning process involving**  
21 **child abuse and neglect.**

22 (a) Within thirty days of the initiation of a judicial  
23 proceeding pursuant to article six of this chapter, the Department  
24 of Health and Human Services shall convene a multidisciplinary

1 treatment team to assess, plan and implement a comprehensive,  
2 individualized service plan for children who are victims of abuse  
3 or neglect and their families. The multidisciplinary team shall  
4 obtain and utilize any assessments for the children or the adult  
5 respondents that it deems necessary to assist in the development of  
6 such a plan.

7 (b) In a case initiated pursuant to article six of this  
8 chapter, the treatment team shall consist of the child or family's  
9 case manager in the Department of Health and Human Resources, the  
10 adult respondent or respondents, the child's parent or parents,  
11 guardians, any copetitioners, custodial relatives of the child,  
12 foster or preadoptive parents, any attorney representing an adult  
13 respondent or other member of the treatment team, the child's  
14 counsel or the guardian ad litem, the prosecuting attorney or his  
15 or her designee, a member of a child advocacy center when the child  
16 has been processed through the child advocacy center program or  
17 programs or it is otherwise appropriate that a member of the child  
18 advocacy center participate, any court-appointed special advocate  
19 assigned to a case, any other person entitled to notice and the  
20 right to be heard, an appropriate school official, and any other  
21 person or agency representative who may assist in providing  
22 recommendations for the particular needs of the child and family,  
23 including domestic violence service providers. The child may  
24 participate in multidisciplinary treatment team meetings if the

1 child's participation is deemed appropriate by the  
2 multidisciplinary treatment team. Unless otherwise ordered by the  
3 court, a party whose parental rights have been terminated and his  
4 or her attorney shall not be given notice of a multidisciplinary  
5 treatment team meeting and does not have the right to participate  
6 in any treatment team meeting.

7 (c) Prior to disposition in each case which a treatment  
8 planning team has been convened, the team shall advise the court as  
9 to the types of services the team has determined are needed and the  
10 type of placement, if any, which will best serve the needs of the  
11 child. If the team determines that an out-of-home placement will  
12 best serve the needs of the child, the team shall first consider  
13 placement at facilities or programs located within the state. The  
14 team may only recommend placement in an out-of-state facility if it  
15 concludes, after considering the best interests and overall needs  
16 of the child, that there are no available and suitable in-state  
17 facilities which can satisfactorily meet the specific needs of the  
18 child.

19 (d) The multidisciplinary treatment team shall submit written  
20 reports to the court as required by the rules governing this type  
21 of proceeding or by the court, and shall meet as often as deemed  
22 necessary but at least every three months until the case is  
23 dismissed from the docket of the court. The multidisciplinary  
24 treatment team shall be available for status conferences and

1 hearings as required by the court.

2 (e) If a respondent or copetitioner admits the underlying  
3 allegations of child abuse or neglect, or both abuse and neglect,  
4 in the multidisciplinary treatment planning process, his or her  
5 statements not be used in any subsequent criminal proceeding  
6 against him or her, except for perjury or false swearing.

7 **§49-5D-3c. Multidisciplinary treatment process for status**  
8 **offenders or delinquents.**

9 (a) (1) When a juvenile is adjudicated as a status offender  
10 pursuant to section eleven-d, article five of this chapter, the  
11 Department of Health and Human Resources shall promptly convene a  
12 multidisciplinary treatment team and conduct an assessment,  
13 utilizing a standard uniform comprehensive assessment instrument or  
14 protocol, to determine the juvenile's mental and physical  
15 condition, maturity and education level, home and family  
16 environment, rehabilitative needs and recommended service plan.  
17 Upon completion of the assessment, the treatment team shall prepare  
18 and implement a comprehensive, individualized service plan for the  
19 juvenile.

20 (2) When a juvenile is adjudicated as a delinquent or has been  
21 granted an improvement period pursuant to section nine, article  
22 five of this chapter, the court, either upon its own motion or  
23 motion of a party, may require the Department of Health and Human  
24 Resources to convene a multidisciplinary treatment team and conduct

1 an assessment, utilizing a standard uniform comprehensive  
2 assessment instrument or protocol, to determine the juvenile's  
3 mental and physical condition, maturity and education level, home  
4 and family environment, rehabilitative needs and recommended  
5 service plan. A referral to the Department of Health and Human  
6 Resources to convene a multidisciplinary treatment team and to  
7 conduct such an assessment shall be made when the court is  
8 considering placing the juvenile in the department's custody or  
9 placing the juvenile out-of-home at the department's expense  
10 pursuant to section thirteen, article five of this chapter. In any  
11 delinquency proceeding in which the court requires the Department  
12 of Health and Human Resources to convene a multidisciplinary  
13 treatment team, the probation officer shall notify the department  
14 at least fifteen working days before the court proceeding in order  
15 to allow the department sufficient time to convene and develop an  
16 individualized service plan for the juvenile.

17 (3) When a juvenile has been adjudicated and committed to the  
18 custody of the director of the Division of Juvenile Services,  
19 including those cases in which the juvenile has been committed for  
20 examination and diagnosis, the Division of Juvenile Services shall,  
21 promptly convene a multidisciplinary treatment team and conduct an  
22 assessment, utilizing a standard uniform comprehensive assessment  
23 instrument or protocol, to determine the juvenile's mental and  
24 physical condition, maturity and education level, home and family

1 environment, rehabilitative needs and recommended service plan.  
2 Upon completion of the assessment, the treatment team shall prepare  
3 and implement a comprehensive, individualized service plan for the  
4 juvenile.

5 (4) (a) The rules of juvenile procedure shall govern the  
6 procedure for obtaining an assessment of a juvenile, preparing an  
7 individualized service plan and submitting the plan and assessment  
8 to the court.

9 (b) In juvenile proceedings conducted pursuant to article five  
10 of this chapter, the treatment team shall consist of the juvenile,  
11 the juvenile's case manager in the Department of Health and Human  
12 Resources or the Division of Juvenile Services, the juvenile's  
13 parent or parents, guardian or guardians or custodial relatives,  
14 the juvenile's attorney, any attorney representing a member of the  
15 treatment team, the prosecuting attorney or his or her designee, an  
16 appropriate school official and any other person or agency  
17 representative who may assist in providing recommendations for the  
18 particular needs of the juvenile and family, including domestic  
19 violence service providers. In delinquency proceedings, the  
20 probation officer shall be a member of a treatment team. When  
21 appropriate, the juvenile case manager in the Department of Health  
22 and Human Resources and the Division of Juvenile Services shall  
23 cooperate in conducting multidisciplinary treatment team meetings  
24 when it is in the juvenile's best interest.

1 (c) Prior to disposition, in each case in which a treatment  
2 planning team has been convened, the team shall advise the court as  
3 to the types of services the team has determined are needed and  
4 type of placement, if any, which will best serve the needs of the  
5 child. If the team determines that an out-of-home placement will  
6 best serve the needs of the child, the team shall first consider  
7 placement at facilities or programs located within the state. The  
8 team may only recommend placement in an out-of-state facility if it  
9 concludes, after considering the best interests and overall needs  
10 of the child, that there are no available and suitable in-state  
11 facilities which can satisfactorily meet the specific needs of the  
12 child.

13 (d) The multidisciplinary treatment team shall submit written  
14 reports to the court as required by applicable law or by the court,  
15 shall meet with the court at least every three months, as long as  
16 the juvenile remains in the legal or physical custody of the state,  
17 and shall be available for status conferences and hearings as  
18 required by the court.

19 (e) In any case in which a juvenile has been placed out of his  
20 or her home except for a temporary placement in a shelter or  
21 detention center, the multidisciplinary treatment team shall  
22 cooperate with the state agency in whose custody the juvenile is  
23 placed to develop an after-care plan. The rules of juvenile  
24 procedure and section twenty, article five, chapter forty-nine of

1 the code shall govern the development of an after-care plan for a  
2 juvenile, the submission of the plan to the court and any objection  
3 to the after-care plan.

4 (f) If a juvenile respondent admits the underlying allegations  
5 of the case initiated pursuant to article five, chapter forty-nine  
6 of this code in the multidisciplinary treatment planning process,  
7 his or her statements shall not be used in any juvenile or criminal  
8 proceedings against the juvenile, except for perjury or false  
9 swearing.

10 **§49-6-2. Petition to court when child believed neglected or abused**

11 -- Right to counsel; improvement period; hearing;  
12 priority of proceeding; transcript;

13 (a) In any proceeding under the provisions of this article,  
14 the child, his or her or parents and his or her legally established  
15 custodian or other persons standing in loco parentis to him or her  
16 shall have the right to be represented by counsel at every stage of  
17 the proceedings and shall be informed by the court of their right  
18 to be so represented and that if they cannot pay for the services  
19 of counsel, that counsel will be appointed. Counsel of the child  
20 shall be appointed in the initial order. If the order gives  
21 physical custody of the child to the state, the initial order shall  
22 appoint counsel for the parents or, if the parents are separated or  
23 divorced, the parents or parent or other person or persons standing  
24 in loco parentis who had physical custody of the child for the



1 majority of the time in the period immediately preceding the  
2 petition: *Provided*, That such representation shall only continue  
3 after the first appearance if the parent or other persons standing  
4 in loco parentis cannot pay for the services of counsel. Counsel  
5 for other parties shall only be appointed upon request for  
6 appointment of counsel. If the requesting parties have not retained  
7 counsel and cannot pay for the services of counsel, the court  
8 shall, by order entered of record, appoint an attorney or attorneys  
9 to represent the other party or parties and so inform the parties.  
10 Under no circumstances may the same attorney represent both the  
11 child and the other party or parties, nor shall the same attorney  
12 represent both parents or custodians. However, one attorney may  
13 represent both parents or custodians where both parents or  
14 guardians consent to this representation after the attorney fully  
15 discloses to the client the possible conflict and where the  
16 attorney assures the court that she or he is able to represent each  
17 client without impairing her or his professional judgment; however,  
18 if more than one child from a family is involved in the proceeding,  
19 one attorney may represent all the children. A parent who has been  
20 judicially determined to be battered shall be entitled to his or  
21 her own attorney. The court may allow to each attorney so appointed  
22 a fee in the same amount which appointed counsel can receive in  
23 felony cases. ~~Any~~ Effective July 1, 2012, any attorney appointed  
24 pursuant to this section shall ~~by the first day of July, one~~

1 ~~thousand nine hundred ninety-three, and three hours per year each~~  
2 ~~year thereafter,~~ receive a minimum of ~~three~~ eight hours of  
3 continuing legal education training ~~on representation of children,~~  
4 ~~child abuse and neglect~~ per reporting period on child abuse and  
5 neglect procedure and practice. In addition to this requirement,  
6 after July 1, 2013, any attorney appointed to represent a child  
7 must first complete training on representation of children that is  
8 approved by the administrative office of the Supreme Court of  
9 Appeals. The Supreme Court of Appeals shall develop procedures for  
10 approval and certification of training required under this section  
11 by July 1, 2012: *Provided, however,* That where no attorney who has  
12 completed this training is available for such appointment, the  
13 court shall appoint a competent attorney with demonstrated  
14 knowledge of child welfare law to represent the parent or child.  
15 Any attorney appointed pursuant to this section shall perform all  
16 duties required as an attorney licensed to practice law in the  
17 State of West Virginia.

18 (b) In any proceeding brought pursuant to the provisions of  
19 this article, the court may grant any respondent an improvement  
20 period in accord with the provisions of this article. During such  
21 period, the court may require temporary custody with a responsible  
22 person which has been found to be a fit and proper person for the  
23 temporary custody of the child or children or the state department  
24 or other agency during the improvement period. An order granting

1 such improvement period shall require the department to prepare and  
2 submit to the court a family case plan in accordance with the  
3 provisions of section three, article six-d of this chapter.

4 (c) In any proceeding pursuant to the provisions of this  
5 article, the party or parties having custodial or other parental  
6 rights or responsibilities to the child shall be afforded a  
7 meaningful opportunity to be heard, including the opportunity to  
8 testify and to present and cross-examine witnesses. The petition  
9 shall not be taken as confessed. A transcript or recording shall be  
10 made of all proceedings unless waived by all parties to the  
11 proceeding. The rules of evidence shall apply. Where relevant, the  
12 court shall consider the efforts of the state department to remedy  
13 the alleged circumstances. At the conclusion of the hearing, the  
14 court shall make a determination based upon the evidence and shall  
15 make findings of fact and conclusions of law as to whether such  
16 child is abused or neglected and, if applicable, whether the  
17 parent, guardian, or custodian is a battered parent, all of which  
18 shall be incorporated into the order of the court. The findings  
19 must be based upon conditions existing at the time of the filing of  
20 the petition and proven by clear and convincing proof.

21 (d) Any petition filed and any proceeding held under the  
22 provisions of this article shall, to the extent practicable, be  
23 given priority over any other civil action before the court, except  
24 proceedings under article two-a, chapter forty-eight of this code

1 and actions in which trial is in progress. Any petition filed under  
2 the provisions of this article shall be docketed immediately upon  
3 filing. Any hearing to be held at the end of an improvement period  
4 and any other hearing to be held during any proceedings under the  
5 provisions of this article shall be held as nearly as practicable  
6 on successive days and, with respect to said hearing to be held at  
7 the end of an improvement period, shall be held as close in time as  
8 possible after the end of said improvement period and shall be held  
9 within sixty days of the termination of such improvement period.

10 (e) Following the court's determination, it shall be inquired  
11 of the parents or custodians whether or not appeal is desired and  
12 the response transcribed. A negative response shall not be  
13 construed as a waiver. The evidence shall be transcribed and made  
14 available to the parties or their counsel as soon as practicable,  
15 if the same is required for purposes of further proceedings. If an  
16 indigent person intends to pursue further proceedings, the court  
17 reporter shall furnish a transcript of the hearing without cost to  
18 the indigent person if an affidavit is filed stating that he or she  
19 cannot pay therefor.

20 **§49-6-3. Petition to court when child believed neglected or abused**

21 **-- Temporary custody;**

22 (a) Upon the filing of a petition, the court may order that  
23 the child alleged to be an abused or neglected child be delivered  
24 for not more than ten days into the custody of the state department

1 or a responsible person found by the court to be a fit and proper  
2 person for the temporary care of the child pending a preliminary  
3 hearing, if it finds that:

4 (1) There exists imminent danger to the physical well-being of  
5 the child; and

6 (2) There are no reasonably available alternatives to removal  
7 of the child, including, but not limited to, the provision of  
8 medical, psychiatric, psychological or homemaking services in the  
9 child's present custody: *Provided*, That where the alleged abusing  
10 person, if known, is a member of a household, the court shall not  
11 allow placement pursuant to this section of the child or children  
12 in said home unless the alleged abusing person is or has been  
13 precluded from visiting or residing in said home by judicial order.  
14 In a case where there is more than one child in the home, or in the  
15 temporary care, custody or control of the alleged offending parent,  
16 the petition shall so state, and notwithstanding the fact that the  
17 allegations of abuse or neglect may pertain to less than all of  
18 such children, each child in the home for whom relief is sought  
19 shall be made a party to the proceeding. Even though the acts of  
20 abuse or neglect alleged in the petition were not directed against  
21 a specific child who is named in the petition, the court shall  
22 order the removal of such child, pending final disposition, if it  
23 finds that there exists imminent danger to the physical well-being  
24 of the child and a lack of reasonable available alternatives to

1 removal. The initial order directing such custody shall contain an  
2 order appointing counsel and scheduling the preliminary hearing,  
3 and upon its service shall require the immediate transfer of  
4 custody of such child or children to the department or a  
5 responsible relative which may include any parent, guardian, or  
6 other custodian. The court order shall state:

7       (A) That continuation in the home is contrary to the best  
8 interests of the child and why; and

9       (B) Whether or not the department made reasonable efforts to  
10 preserve the family and prevent the placement or that the emergency  
11 situation made such efforts unreasonable or impossible. The order  
12 may also direct any party or the department to initiate or become  
13 involved in services to facilitate reunification of the family.

14       (b) Whether or not the court orders immediate transfer of  
15 custody as provided in subsection (a) of this section, if the facts  
16 alleged in the petition demonstrate to the court that there exists  
17 imminent danger to the child, the court may schedule a preliminary  
18 hearing giving the respondents at least five days' actual notice.  
19 If the court finds at the preliminary hearing that there are no  
20 alternatives less drastic than removal of the child and that a  
21 hearing on the petition cannot be scheduled in the interim period,  
22 the court may order that the child be delivered into the temporary  
23 custody of the department or a responsible person or agency found  
24 by the court to be a fit and proper person for the temporary care

1 of the child for a period not exceeding sixty days: *Provided*, That  
2 the court order shall state:

3 (1) That continuation in the home is contrary to the best  
4 interests of the child and set forth the reasons therefor;

5 (2) whether or not the department made reasonable efforts to  
6 preserve the family and to prevent the child's removal from his or  
7 her home;

8 (3) Whether or not the department made reasonable efforts to  
9 preserve the family and to prevent the placement or that the  
10 emergency situation made such efforts unreasonable or impossible;  
11 and

12 (4) What efforts should be made by the department, if any, to  
13 facilitate the child's return home: *Provided, however*, That if the  
14 court grants an improvement period as provided in section twelve of  
15 this article, the sixty-day limit upon temporary custody is waived.

16 (c) If a child or children shall, in the presence of a child  
17 protective service worker, be in an emergency situation which  
18 constitutes an imminent danger to the physical well-being of the  
19 child or children, as that phrase is defined in section three,  
20 article one of this chapter, and if such worker has probable cause  
21 to believe that the child or children will suffer additional child  
22 abuse or neglect or will be removed from the county before a  
23 petition can be filed and temporary custody can be ordered, the  
24 worker may, prior to the filing of a petition, take the child or

1 children into his or her custody without a court order: *Provided,*  
2 That after taking custody of such child or children prior to the  
3 filing of a petition, the worker shall forthwith appear before a  
4 circuit judge or a juvenile referee of the county wherein custody  
5 was taken, or if no such judge or referee be available, before a  
6 circuit judge or a juvenile referee of an adjoining county, and  
7 shall immediately apply for an order ratifying the emergency  
8 custody of the child pending the filing of a petition. The circuit  
9 court of every county in the state shall appoint at least one of  
10 the magistrates of the county to act as a juvenile referee, who  
11 shall serve at the will and pleasure of the appointing court, and  
12 who shall perform the functions prescribed for such position by the  
13 provisions of this subsection. The parents, guardians or custodians  
14 of the child or children may be present at the time and place of  
15 application for an order ratifying custody, and if at the time the  
16 child or children are taken into custody by the worker, the worker  
17 knows which judge or referee is to receive the application, the  
18 worker shall so inform the parents, guardians or custodians. The  
19 application for emergency custody may be on forms prescribed by the  
20 Supreme Court of Appeals or prepared by the prosecuting attorney or  
21 the applicant, and shall set forth facts from which it may be  
22 determined that the probable cause described above in this  
23 subsection exists. Upon such sworn testimony or other evidence as  
24 the judge or referee deems sufficient, the judge or referee may



1 order the emergency taking by the worker to be ratified. If  
2 appropriate under the circumstances, the order may include  
3 authorization for an examination as provided for in subsection (b),  
4 section four of this article. If a referee issues such an order,  
5 the referee shall by telephonic communication have such order  
6 orally confirmed by a circuit judge of the circuit or an adjoining  
7 circuit who shall on the next judicial day enter an order of  
8 confirmation. If the emergency taking is ratified by the judge or  
9 referee, emergency custody of the child or children shall be vested  
10 in the department until the expiration of the next two judicial  
11 days, at which time any such child taken into emergency custody  
12 shall be returned to the custody of his or her parent or guardian  
13 or custodian unless a petition has been filed and custody of the  
14 child has been transferred under the provisions of section three of  
15 this article.

16 (d) For purposes of the court's consideration of temporary  
17 custody pursuant to the provisions of subsection (a) or (b) of this  
18 section, the department is not required to make reasonable efforts  
19 to preserve the family if the court determines:

20 (1) The parent has subjected the child, another child of the  
21 parent, or any other child residing in the same household or under  
22 the temporary or permanent custody of the parent to aggravated  
23 circumstances which include, but are not limited to, abandonment,  
24 torture, chronic abuse and sexual abuse;

1 (2) The parent has:

2 (A) Committed murder of the child's other parent, guardian or  
3 custodian, another child of the parent, or any other child residing  
4 in the same household or under the temporary or permanent custody  
5 of the parent;

6 (B) Committed voluntary manslaughter of the child's other  
7 parent, guardian or custodian, another child of the parent, or any  
8 other child residing in the same household or under the temporary  
9 or permanent custody of the parent;

10 (C) Attempted or conspired to commit such a murder or  
11 voluntary manslaughter or been an accessory before or after the  
12 fact to either such crime;

13 (D) Committed unlawful or malicious wounding that results in  
14 serious bodily injury to the child, the child's other parent,  
15 guardian or custodian, to another child of the parent, or any other  
16 child residing in the same household or under the temporary or  
17 permanent custody of the parent; ~~or~~

18 (E) Committed sexual assault or sexual abuse of the child, the  
19 child's other parent, guardian, or custodian, another child of the  
20 parent, or any other child residing in the same household or under  
21 the temporary or permanent custody of the parent; or

22 (F) Required by state or federal law to register with a sex  
23 offender registry.

24 (3) The parental rights of the parent to another child have

1 been terminated involuntarily.

2 **§49-6-5. Disposition of neglected or abused children;**

3 (a) Following a determination pursuant to section two of this  
4 article wherein the court finds a child to be abused or neglected,  
5 the department shall file with the court a copy of the child's case  
6 plan, including the permanency plan for the child. The term case  
7 plan means a written document that includes, where applicable, the  
8 requirements of the family case plan as provided for in section  
9 three, article six-d of this chapter and that also includes at  
10 least the following: A description of the type of home or  
11 institution in which the child is to be placed, including a  
12 discussion of the appropriateness of the placement and how the  
13 agency which is responsible for the child plans to assure that the  
14 child receives proper care and that services are provided to the  
15 parents, child and foster parents in order to improve the  
16 conditions in the parent(s) home; facilitate return of the child to  
17 his or her own home or the permanent placement of the child; and  
18 address the needs of the child while in foster care, including a  
19 discussion of the appropriateness of the services that have been  
20 provided to the child. The term "permanency plan" refers to that  
21 part of the case plan which is designed to achieve a permanent home  
22 for the child in the least restrictive setting available. The plan  
23 must document efforts to ensure that the child is returned home  
24 within approximate time lines for reunification as set out in the

1 plan. Reasonable efforts to place a child for adoption or with a  
2 legal guardian may be made at the same time reasonable efforts are  
3 made to prevent removal or to make it possible for a child to  
4 safely return home. If reunification is not the permanency plan for  
5 the child, the plan must state why reunification is not appropriate  
6 and detail the alternative placement for the child to include  
7 approximate time lines for when such placement is expected to  
8 become a permanent placement. This case plan shall serve as the  
9 family case plan for parents of abused or neglected children.  
10 Copies of the child's case plan shall be sent to the child's  
11 attorney and parent, guardian or custodian or their counsel at  
12 least five days prior to the dispositional hearing. The court shall  
13 forthwith proceed to disposition giving both the petitioner and  
14 respondents an opportunity to be heard. The court shall give  
15 precedence to dispositions in the following sequence:

- 16 (1) Dismiss the petition;
- 17 (2) Refer the child, the abusing parent, the battered parent  
18 or other family members to a community agency for needed assistance  
19 and dismiss the petition;
- 20 (3) Return the child to his or her own home under supervision  
21 of the department;
- 22 (4) Order terms of supervision calculated to assist the child  
23 and any abusing parent or battered parent or parents or custodian  
24 which prescribe the manner of supervision and care of the child and

1 which are within the ability of any parent or parents or custodian  
2 to perform;

3 (5) Upon a finding that the abusing parent or battered parent  
4 or parents are presently unwilling or unable to provide adequately  
5 for the child's needs, commit the child temporarily to the custody  
6 of the state department, a licensed private child welfare agency or  
7 a suitable person who may be appointed guardian by the court. The  
8 court order shall state:

9 (A) That continuation in the home is contrary to the best  
10 interests of the child and why;

11 (B) Whether or not the department has made reasonable efforts,  
12 with the child's health and safety being the paramount concern, to  
13 preserve the family, or some portion thereof, and to prevent or  
14 eliminate the need for removing the child from the child's home and  
15 to make it possible for the child to safely return home;

16 (C) What efforts were made or that the emergency situation  
17 made such efforts unreasonable or impossible; and

18 (D) The specific circumstances of the situation which made  
19 such efforts unreasonable if services were not offered by the  
20 department. The court order shall also determine under what  
21 circumstances the child's commitment to the department shall  
22 continue. Considerations pertinent to the determination include  
23 whether the child should:

24 (i) Be continued in foster care for a specified period;

1           (ii) Be considered for adoption;

2           (iii) Be considered for legal guardianship;

3           (iv) Be considered for permanent placement with a fit and  
4 willing relative; or

5           (v) Be placed in another planned permanent living arrangement,  
6 but only in cases where the department has documented to the  
7 circuit court a compelling reason for determining that it would not  
8 be in the best interests of the child to follow one of the options  
9 set forth in subparagraphs (i), (ii), (iii) or (iv) of this  
10 paragraph. The court may order services to meet the special needs  
11 of the child. Whenever the court transfers custody of a youth to  
12 the department, an appropriate order of financial support by the  
13 parents or guardians shall be entered in accordance with section  
14 five, article seven of this chapter; or

15           (6) Upon a finding that there is no reasonable likelihood that  
16 the conditions of neglect or abuse can be substantially corrected  
17 in the near future and, when necessary for the welfare of the  
18 child, terminate the parental, custodial and guardianship rights  
19 and responsibilities of the abusing parent and commit the child to  
20 the permanent sole custody of the nonabusing parent, if there be  
21 one, or, if not, to either the permanent guardianship of the  
22 department or a licensed child welfare agency. The court may award  
23 sole custody of the child to a nonabusing battered parent. If the  
24 court shall so find, then in fixing its dispositional order the

1 court shall consider the following factors:

2 (A) The child's need for continuity of care and caretakers;

3 (B) The amount of time required for the child to be integrated  
4 into a stable and permanent home environment; and

5 (C) Other factors as the court considers necessary and proper.

6 Notwithstanding any other provision of this article, the court  
7 shall give consideration to the wishes of a child fourteen years of  
8 age or older or otherwise of an age of discretion as determined by  
9 the court regarding the permanent termination of parental rights.

10 No adoption of a child shall take place until all proceedings for  
11 termination of parental rights under this article and appeals  
12 thereof are final. In determining whether or not parental rights  
13 should be terminated, the court shall consider the efforts made by  
14 the department to provide remedial and reunification services to  
15 the parent. The court order shall state:

16 (i) That continuation in the home is not in the best interest  
17 of the child and why;

18 (ii) Why reunification is not in the best interests of the  
19 child;

20 (iii) Whether or not the department made reasonable efforts,  
21 with the child's health and safety being the paramount concern, to  
22 preserve the family, or some portion thereof, and to prevent the  
23 placement or to eliminate the need for removing the child from the  
24 child's home and to make it possible for the child to safely return

1 home, or that the emergency situation made such efforts  
2 unreasonable or impossible; and

3 (iv) Whether or not the department made reasonable efforts to  
4 preserve and reunify the family, or some portion thereof, including  
5 a description of what efforts were made or that such efforts were  
6 unreasonable due to specific circumstances.

7 (7) For purposes of the court's consideration of the  
8 disposition custody of a child pursuant to the provisions of this  
9 subsection, the department is not required to make reasonable  
10 efforts to preserve the family if the court determines:

11 (A) The parent has subjected the child, another child of the  
12 parent, or any other child residing in the same household or under  
13 the temporary or permanent custody of the parent to aggravated  
14 circumstances which include, but are not limited to, abandonment,  
15 torture, chronic abuse and sexual abuse;

16 (B) The parent has:

17 (i) Committed murder of the child's other parent, guardian or  
18 custodian, another child of the parent or any other child residing  
19 in the same household or under the temporary or permanent custody  
20 of the parent;

21 (ii) Committed voluntary manslaughter of the child's other  
22 parent, guardian or custodian, another child of the parent, or any  
23 other child residing in the same household or under the temporary  
24 or permanent custody of the parent;



1 (iii) Attempted or conspired to commit such a murder or  
2 voluntary manslaughter or been an accessory before or after the  
3 fact to either such crime;

4 (iv) Committed a felonious assault that results in serious  
5 bodily injury to the child, the child's other parent, guardian or  
6 custodian, to another child of the parent, or any other child  
7 residing in the same household or under the temporary or permanent  
8 custody of the parent; ~~or~~

9 (v) Committed sexual assault or sexual abuse of the child, the  
10 child's other parent, guardian, or custodian, another child of the  
11 parent, or any other child residing in the same household or under  
12 the temporary or permanent custody of the parent; or

13 (vi) Required by state or federal law to register with a sex  
14 offender registry.

15 (C) The parental rights of the parent to another child have  
16 been terminated involuntarily.

17 (b) As used in this section, "no reasonable likelihood that  
18 conditions of neglect or abuse can be substantially corrected"  
19 shall mean that, based upon the evidence before the court, the  
20 abusing adult or adults have demonstrated an inadequate capacity to  
21 solve the problems of abuse or neglect on their own or with help.  
22 Such conditions shall be considered to exist in the following  
23 circumstances, which shall not be exclusive:

24 (1) The abusing parent or parents have habitually abused or

1 are addicted to alcohol, controlled substances or drugs, to the  
2 extent that proper parenting skills have been seriously impaired  
3 and such person or persons have not responded to or followed  
4 through the recommended and appropriate treatment which could have  
5 improved the capacity for adequate parental functioning;

6 (2) The abusing parent or parents have willfully refused or  
7 are presently unwilling to cooperate in the development of a  
8 reasonable family case plan designed to lead to the child's return  
9 to their care, custody and control;

10 (3) The abusing parent or parents have not responded to or  
11 followed through with a reasonable family case plan or other  
12 rehabilitative efforts of social, medical, mental health or other  
13 rehabilitative agencies designed to reduce or prevent the abuse or  
14 neglect of the child, as evidenced by the continuation or  
15 insubstantial diminution of conditions which threatened the health,  
16 welfare or life of the child;

17 (4) The abusing parent or parents have abandoned the child;

18 (5) The abusing parent or parents have repeatedly or seriously  
19 injured the child physically or emotionally, or have sexually  
20 abused or sexually exploited the child, and the degree of family  
21 stress and the potential for further abuse and neglect are so great  
22 as to preclude the use of resources to mitigate or resolve family  
23 problems or assist the abusing parent or parents in fulfilling  
24 their responsibilities to the child;

1 (6) The abusing parent or parents have incurred emotional  
2 illness, mental illness or mental deficiency of such duration or  
3 nature as to render such parent or parents incapable of exercising  
4 proper parenting skills or sufficiently improving the adequacy of  
5 such skills; or

6 (7) The battered parent's parenting skills have been seriously  
7 impaired and said person has willfully refused or is presently  
8 unwilling or unable to cooperate in the development of a reasonable  
9 treatment plan or has not adequately responded to or followed  
10 through with the recommended and appropriate treatment plan.

11 (c) The court may, as an alternative disposition, allow the  
12 parents or custodians an improvement period not to exceed six  
13 months. During this period the court shall require the parent to  
14 rectify the conditions upon which the determination was based. The  
15 court may order the child to be placed with the parents, or any  
16 person found to be a fit and proper person, for the temporary care  
17 of the child during the period. At the end of the period, the court  
18 shall hold a hearing to determine whether the conditions have been  
19 adequately improved and at the conclusion of the hearing shall make  
20 a further dispositional order in accordance with this section.

21 **§49-6-6. Modification of dispositional orders.**

22 (a) Upon motion of a child, a child's parent or custodian, or  
23 the State Department of Health and Human Resources alleging a  
24 change of circumstances requiring a different disposition, the

1 court shall conduct a hearing pursuant to section two of this  
2 article and may modify a dispositional order if the court finds by  
3 clear and convincing evidence a material change of circumstances  
4 and that such modification is in the child's best interests:  
5 *Provided*, That a dispositional order pursuant to subdivision (6),  
6 subsection (a) of section five shall not be modified after the  
7 child has been adopted, except as provided in subsections (b) and  
8 (c) of this section. Adequate and timely notice of any motion for  
9 modification shall be given to the child's counsel, counsel for the  
10 child's parent or custodian ~~and, to the state department~~ and any  
11 person entitled to notice and the right to be heard. The circuit  
12 court of origin has exclusive jurisdiction over placement of the  
13 child, and such placement shall not be disrupted or delayed by any  
14 administrative process of the department.

15 (b) If the child is removed or relinquished from an adoptive  
16 home or other permanent placement after the case has been  
17 dismissed, any party with notice thereof and the receiving agency  
18 shall promptly report the matter to the circuit court of origin,  
19 the department, and the child's counsel, and the court shall  
20 schedule a permanency hearing within sixty days, with notice given  
21 to any appropriate parties and persons entitled to notice and the  
22 right to be heard. The department shall convene a multidisciplinary  
23 treatment team meeting within thirty days of the receipt of notice  
24 of permanent placement disruption.

1 (c) If a child has not been adopted, the child or department  
2 may move the court to place the child with a parent or custodian  
3 whose rights have been terminated and/or restore such parent's or  
4 guardian's rights. Under these circumstances, the court may order  
5 such placement and/or restoration of a parent's or guardian's  
6 rights if it finds by clear and convincing evidence a material  
7 change of circumstances and that such placement and/or restoration  
8 is in the child's best interests.

9 **§49-6-8. Permanency Hearing and Permanent Placement Review.**

10 (a) If the court finds, pursuant to any provision of this  
11 article, that the department is not required to make reasonable  
12 efforts to preserve the family, then, notwithstanding any other  
13 provision, a permanency hearing must be held within thirty days  
14 following the entry of the court order so finding, and a permanent  
15 placement review hearing must be conducted at least once every  
16 three calendar months thereafter until a permanent placement is  
17 achieved.

18 ~~(a)~~ (b) If, twelve months after receipt by the department or  
19 its authorized agent of physical custody of a child either by a  
20 court ordered placement or by a voluntary agreement, the department  
21 has not placed a child in an adoptive home or placed the child with  
22 a natural parent or placed the child in legal guardianship or  
23 permanently placed the child with a fit and willing relative, the  
24 ~~department shall file with the court a petition for review of the~~

1 ~~case~~ court shall hold a permanency hearing. The department shall  
2 ~~also~~ file a report with the court ~~with the court a report~~ detailing  
3 the efforts that have been made to place the child in a permanent  
4 home and copies of the child's case plan, including the permanency  
5 plan as defined in section five, article six of this chapter. Copies  
6 of the report shall be sent to the ~~child's attorney and be made~~  
7 ~~available to the child's parent(s) or guardian~~ parties and all  
8 persons entitled to notice and the right to be heard. The court  
9 shall schedule a hearing ~~in chambers,~~ giving notice and the right  
10 to be present to: The child's attorney; the child, if twelve years  
11 of age or older; the child's parents; the child's guardians; the  
12 child's foster parents; any preadoptive parent or any relative  
13 providing care for the child; any person entitled to notice and the  
14 right to be heard; and such other persons as the court may, in its  
15 discretion, direct. The child's presence may be waived by the  
16 child's attorney at the request of the child or if the child would  
17 suffer emotional harm. The purpose of the hearing is to review the  
18 child's case, to determine whether and under what conditions the  
19 child's commitment to the department shall continue and to determine  
20 what efforts are necessary to provide the child with a permanent  
21 home. In the case of a child who will not be returned to his or her  
22 parent, the court shall consider in-state and out-of-state placement  
23 options, and, if the court considers an out-of-state placement, the  
24 court shall determine whether such placement is in the best

1 interests of the child; in the case of a child who has attained  
2 sixteen years of age, the court shall determine the services needed  
3 to assist the child to make the transition from foster care to  
4 independent living. In any case in which the court decides to order  
5 the child placed in an out-of-state facility or program it shall set  
6 forth in the order directing the placement the reasons why the child  
7 was not placed in an in-state facility or program. At the conclusion  
8 of the hearing the court shall, in accordance with the best  
9 interests of the child, enter an ~~appropriate~~ order containing all  
10 such appropriate findings. ~~of disposition.~~ The court order shall  
11 state: (1) Whether or not the department made reasonable efforts to  
12 preserve the family and to prevent out-of-home placement or that the  
13 specific situation made such effort unreasonable; (2) whether or not  
14 the department made reasonable efforts to finalize the permanency  
15 plan for the child; and (3) identify services required to meet the  
16 child's needs. ~~needs: Provided, That the department is not required~~  
17 ~~to make reasonable efforts to preserve the family if the court~~  
18 ~~determines any of the conditions set forth in subdivision (7),~~  
19 ~~subsection (a), section five of this article exist.~~ The court shall  
20 ~~possess continuing jurisdiction over cases reviewed under this~~  
21 ~~section for so long as a child remains in temporary foster care or,~~  
22 ~~when a child is returned to his or her natural parents subject to~~  
23 ~~conditions imposed by the court, for so long as the conditions are~~  
24 ~~effective.~~

1       ~~(b)~~ (c) The ~~state department court shall file a supplementary~~  
2 ~~petition for review with the court~~ shall conduct another permanency  
3 hearing within ~~twelve months and every~~ twelve months thereafter for  
4 ~~every~~ each child ~~that~~ who remains in the physical or legal custody  
5 of the State Department of Health and Human Resources until the  
6 child is placed in an adoptive home or returned to his or her  
7 parents or placed in legal guardianship or permanently placed with  
8 a fit and willing relative.

9       ~~(c)~~ (d) The state department shall annually report to the court  
10 the current status of the placements of children in permanent care  
11 and custody of the state department who have not been adopted.

12       ~~(d)~~ (e) The state department shall file a report with the court  
13 in any case where any child in the temporary or permanent custody  
14 of the state receives more than three placements in one year no  
15 later than thirty days after the third placement. This report shall  
16 be provided to all parties and persons entitled to notice and the  
17 right to be heard. ~~and their counsel.~~ Upon motion by any party, the  
18 court shall review these placements and determine what efforts are  
19 necessary to provide the child with a ~~stable foster or temporary~~  
20 permanent home: *Provided,* That no report shall be provided to any  
21 parent or parent's attorney whose parental rights have been  
22 terminated pursuant to this article.

23       ~~(e)~~ (f) The state department shall notify, in writing, the  
24 court, the child, if over the age of twelve, the child's attorney,



1 the parents and the parents' attorney forty-eight hours prior to the  
2 move if this is a planned move, or within forty-eight hours of the  
3 next business day after the move if this is an emergency move,  
4 except where such notification would endanger the child or the  
5 foster family. This notice shall not be required in any case where  
6 the child is in imminent danger in the child's current placement.  
7 The location of the child need not be disclosed, but the purpose of  
8 the move should be. This requirement is not waived by placement of  
9 the child in a home or other residence maintained by a private  
10 provider. No notice shall be provided pursuant to this provision to  
11 any parent or parent's attorney whose parental rights have been  
12 terminated pursuant to this article.

13 ~~(f)~~ (g) Nothing in this article precludes any party from  
14 petitioning the court for review of the child's case at any time.  
15 The court shall grant such petition upon a showing that there is a  
16 change in circumstance or needs of the child that warrants court  
17 review.

18 (h) Any foster parent, preadoptive parent or relative providing  
19 care for the child shall be given notice of and the right to be  
20 heard at the permanency hearing provided in this section.

21 **§49-6-9a. Custody Ordered from Family Court in emergency**  
22 **situations.**

23 (a) Where any child in a family court proceeding is in  
24 circumstances constituting imminent danger in the presence of a

1 family court judge, and the family court judge finds the child to  
2 be neglected or abused as defined in section three, article one of  
3 this chapter, the judge may order the child to be taken into the  
4 emergency custody of the Department of Health and Human Resources  
5 without the court order otherwise required by section three of this  
6 article, if the judge finds that: (1) There exists an imminent  
7 danger to the physical well-being of the child as defined in section  
8 three, article one of this chapter; and (2) there are no reasonable,  
9 available alternatives to the emergency custody order. Upon  
10 notification by the family court judge that there exists an imminent  
11 danger to the physical well-being of the child, the department shall  
12 immediately respond and assist the judge in emergency placement of  
13 the child.

14 (b) A child taken into emergency protective custody as subject  
15 to imminent danger under the provisions of this section may be  
16 housed by the department or an authorized child shelter facility if  
17 no other reasonable alternative is available to the court. The  
18 authority to hold the child in protective custody as provided by  
19 this section, absent a petition and proper order granting temporary  
20 custody pursuant to section three of this article, shall terminate  
21 by operation of law upon expiration of ninety-six hours from the  
22 time the child is initially taken into protective custody.

23 (c) The family court shall, within two judicial days of its  
24 emergency custody order issued pursuant to this section, file a

1 written order specifying all the facts upon which the decision to  
2 order the child into protective custody was based and the date, time  
3 and place of the taking. A copy of the written order shall be  
4 transmitted forthwith to the department, the circuit court and  
5 prosecuting attorney of the county. Upon receiving the written  
6 order, the circuit court shall forthwith cause to be entered and  
7 served an administrative order in the name of and regarding the  
8 affected child directing the department to submit to the family and  
9 circuit court an investigative report, including whether the  
10 department intends to file a petition under section three of this  
11 article, or appear before the circuit court in not more than ninety-  
12 six hours from the taking at a scheduled hearing, to show cause why  
13 the department's investigation report has not been submitted to the  
14 circuit court and referring family court. The scheduled hearing may  
15 be mooted by the department's earlier submission of the  
16 investigative report or, in the alternative, the filing of a child  
17 abuse and neglect petition under section three of this article. The  
18 family court shall retain full jurisdiction of the child custody  
19 proceedings or protective order proceedings, or both, until a child  
20 abuse and neglect petition is filed.

21 (d) Any worker for the department assuming custody of a child  
22 pursuant to the provisions of this section shall immediately notify  
23 the child's parents, parent, guardian or custodian of the taking of  
24 custody of the child and the underlying reasons for taking custody,

1 if the whereabouts of the parents, parent, guardian or custodian are  
2 known or can be discovered with due diligence; and if not, notice  
3 and explanation shall be given to the child's closest relative, if  
4 his or her whereabouts are known or can be discovered with due  
5 diligence within a reasonable time. An inquiry shall be made of  
6 relatives and neighbors, and if an appropriate relative or neighbor  
7 is willing to assume custody of such child, such child shall  
8 temporarily be placed in such custody.

9 (e) No child may be taken into custody under circumstances not  
10 justified by this section or pursuant to section three of this  
11 article without appropriate process. Any retention of a child or  
12 order for retention of a child not complying with the time limits  
13 and other requirements specified in this article is void by  
14 operation of law.

15 **§49-6-12. Improvement period in cases of child neglect or abuse**

16 (a) A court may grant a respondent an improvement period of a  
17 period not to exceed three months prior to making a finding that a  
18 child is abused or neglected pursuant to section two of this article  
19 only when:

20 (1) The respondent files a written motion requesting the  
21 improvement period;

22 (2) The respondent demonstrates, by clear and convincing  
23 evidence, that the respondent is likely to fully participate in the  
24 improvement period and the court further makes a finding, on the

1 record, of the terms of the improvement period;

2       (3) In the order granting the improvement period, the court (A)  
3 orders that a hearing be held to review the matter within sixty days  
4 of the granting of the improvement period, or (B) orders that a  
5 hearing be held to review the matter within ninety days of the  
6 granting of the improvement period and that the department submit  
7 a report as to the respondents progress in the improvement period  
8 within sixty days of the order granting the improvement period; and

9       (4) The order granting the improvement period requires the  
10 department to prepare and submit to the court an individualized  
11 family case plan in accordance with the provisions of section three,  
12 article six-d of this chapter;

13       (b) After finding that a child is an abused or neglected child  
14 pursuant to section two of this article, a court may grant a  
15 respondent an improvement period of a period not to exceed six  
16 months when:

17       (1) The respondent files a written motion requesting the  
18 improvement period;

19       (2) The respondent demonstrates, by clear and convincing  
20 evidence, that the respondent is likely to fully participate in the  
21 improvement period and the court further makes a finding, on the  
22 record, of the terms of the improvement period;

23       (3) In the order granting the improvement period, the court (A)  
24 orders that a hearing be held to review the matter within sixty days

1 of the granting of the improvement period, or (B) orders that a  
2 hearing be held to review the matter within ninety days of the  
3 granting of the improvement period and that the department submit  
4 a report as to the respondent's progress in the improvement period  
5 within sixty days of the order granting the improvement period;

6 (4) Since the initiation of the proceeding, the respondent has  
7 not previously been granted any improvement period or the respondent  
8 demonstrates that since the initial improvement period, the  
9 respondent has experienced a substantial change in circumstances.  
10 Further, the respondent shall demonstrate that due to that change  
11 in circumstances the respondent is likely to fully participate in  
12 a further improvement period; and

13 (5) The order granting the improvement period requires the  
14 department to prepare and submit to the court an individualized  
15 family case plan in accordance with the provisions of section three,  
16 article six-d of this chapter.

17 (c) The court may grant an improvement period not to exceed six  
18 months as a disposition pursuant to section five of this article  
19 when:

20 (1) The respondent moves in writing for the improvement period;

21 (2) The respondent demonstrates, by clear and convincing  
22 evidence, that the respondent is likely to fully participate in the  
23 improvement period and the court further makes a finding, on the  
24 record, of the terms of the improvement period;

1 (3) In the order granting the improvement period, the court:

2 (A) Orders that a hearing be held to review the matter within  
3 sixty days of the granting of the improvement period, or

4 (B) Orders that a hearing be held to review the matter within  
5 ninety days of the granting of the improvement period and that the  
6 department submit a report as to the respondent's progress in the  
7 improvement period within sixty days of the order granting the  
8 improvement period;

9 (4) Since the initiation of the proceeding, the respondent has  
10 not previously been granted any improvement period or the respondent  
11 demonstrates that since the initial improvement period, the  
12 respondent has experienced a substantial change in circumstances.  
13 Further, the respondent shall demonstrate that due to that change in  
14 circumstances, the respondent is likely to fully participate in the  
15 improvement period; and

16 (5) The order granting the improvement period shall require the  
17 department to prepare and submit to the court an individualized  
18 family case plan in accordance with the provisions of section three,  
19 article six-d of this chapter.

20 (d) When any improvement period is granted to a respondent  
21 pursuant to the provisions of this section, the respondent shall be  
22 responsible for the initiation and completion of all terms of the  
23 improvement period. The court may order the state department to pay  
24 expenses associated with the services provided during the

1 improvement period when the respondent has demonstrated that he or  
2 she is unable to bear such expenses.

3 (e) When any improvement period is granted to a respondent  
4 pursuant to the provisions of this section, the respondent shall  
5 execute a release of all medical information regarding that  
6 respondent, including, but not limited to, information provided by  
7 mental health and substance abuse professionals and facilities. Such  
8 release shall be accepted by any such professional or facility  
9 regardless of whether the release conforms to any standard required  
10 by that facility.

11 (f) When any respondent is granted an improvement period  
12 pursuant to the provisions of this article, the department shall  
13 monitor the progress of such person in the improvement period. When  
14 the respondent fails to participate in any service mandated by the  
15 improvement period, the state department shall initiate action to  
16 inform the court of that failure. When the department demonstrates  
17 that the respondent has failed to participate in any provision of  
18 the improvement period, the court shall forthwith terminate the  
19 improvement period.

20 (g) A court may extend any improvement period granted pursuant  
21 to subsections (b) or (c) of this section for a period not to exceed  
22 three months when the court finds that the respondent has  
23 substantially complied with the terms of the improvement period;  
24 that the continuation of the improvement period will not



1 substantially impair the ability of the department to permanently  
2 place the child; and that such extension is otherwise consistent  
3 with the best interest of the child.

4 (h) Upon the motion by any party, the court shall terminate any  
5 improvement period granted pursuant to this section when the court  
6 finds that respondent has failed to fully participate in the terms  
7 of the improvement period.

8 (i) This section may not be construed to prohibit a court from  
9 ordering a respondent to participate in services designed to reunify  
10 a family or to relieve the department of any duty to make reasonable  
11 efforts to reunify a family required by state or federal law.

12 (j) Any hearing scheduled pursuant to the provisions of this  
13 section may be continued only for good cause upon a written motion  
14 properly served on all parties. When a court grants such  
15 continuance, the court shall enter an order granting the continuance  
16 which shall specify a future date when the hearing will be held.

17 (k) Any hearing to be held at the end of an improvement period  
18 shall be held as nearly as practicable on successive days and shall  
19 be held as close in time as possible after the end of said  
20 improvement period and shall be held no later than sixty days of the  
21 termination of such improvement period.

22 (l) Notwithstanding any other provision of this section, no  
23 combination of any improvement periods or extensions thereto may  
24 cause a child to be in foster care more than fifteen months of the

1 most recent twenty-two months, unless the court finds compelling  
2 circumstances by clear and convincing evidence that it is in the  
3 child's best interests to extend the time limits contained in this  
4 paragraph.

5 **§49-6D-3. Unified child and family case plans.**

6 (a) The Department of Health and Human Resources shall develop  
7 a unified child and family case plan for every family wherein a  
8 person has been referred to the department after being allowed an  
9 improvement period or where the child is placed in foster care under  
10 the provisions of section twelve, article six of this chapter. The  
11 case plan must be filed within sixty days of the child coming into  
12 foster care or within thirty days of the inception of the  
13 improvement period, whichever occurs first. The department may also  
14 prepare a family case plan for any person who voluntarily seeks  
15 child abuse and neglect services from the department, or who is  
16 referred to the department by another public agency or private  
17 organization. ~~The family case plan is to clearly set forth an~~  
18 ~~organized, realistic method of identifying family problems and the~~  
19 ~~logical steps to be used in resolving or lessening those problems.~~  
20 The case plan provisions shall comply with federal law and the rules  
21 of procedure for child abuse and neglect proceedings. Every family  
22 case plan prepared by the department shall contain the following:

23 (1) ~~A listing of specific, measurable, realistic goals to be~~  
24 ~~achieved;~~

- 1       ~~(2) An arrangement of goals into an order of priority;~~
- 2       ~~(3) A listing of the problems that will be addressed by each~~  
3 ~~goal;~~
- 4       ~~(4) A specific description of how the assigned caseworker or~~  
5 ~~caseworkers and the abusing parent, guardian or custodian will~~  
6 ~~achieve each goal;~~
- 7       ~~(5) A description of the departmental and community resources~~  
8 ~~to be used in implementing the proposed actions and services;~~
- 9       ~~(6) A list of the services, including time limited~~  
10 ~~reunification services as defined in section three, article one of~~  
11 ~~this chapter, which will be provided;~~
- 12       ~~(7) Time targets for the achievement of goals or portions of~~  
13 ~~goals;~~
- 14       ~~(8) An assignment of tasks to the abusing or neglecting parent,~~  
15 ~~guardian or custodian, to the caseworker or caseworkers and to other~~  
16 ~~participants in the planning process;~~
- 17       ~~(9) A designation of when and how often tasks will be~~  
18 ~~performed; and~~
- 19       ~~(10) The safety of the placement of the child and plans for~~  
20 ~~returning the child safely home.~~
- 21       ~~(b) In cases where the family has been referred to the~~  
22 ~~department by a court under the provisions of this chapter, and~~  
23 ~~further action before the court is pending, the family case plan~~  
24 ~~described in subsection (a) of this section shall be furnished to~~

~~1 the court within thirty days after the entry of the order referring~~  
~~2 the case to the department, and shall be available to counsel for~~  
~~3 the parent, guardian or custodian and counsel for the child or~~  
~~4 children.~~ The department shall ~~encourage participation in~~ convene a  
5 multidisciplinary treatment team, which shall develop the  
~~6 development the family case plan by the parent, guardian or~~  
~~7 custodian.~~ Parents, guardians, or custodians shall participate fully  
8 in the development of the case plan, and the child shall also fully  
9 participate if sufficiently mature and ~~if the child is above the age~~  
~~10 of twelve years and the child's participation is otherwise~~  
~~11 appropriate. by the child. It shall be the duty of counsel for the~~  
~~12 participants to participate in the development of the family case~~  
~~13 plan.~~ The family case plan may be modified from time to time ~~by the~~  
~~14 department~~ to allow for flexibility in goal development, and in each  
~~15 such case the modifications shall be submitted to the court in~~  
~~16 writing. Reasonable efforts to place a child for adoption or with a~~  
~~17 legal guardian may be made at the same time as reasonable efforts~~  
~~18 are being made to prevent removal or to make it possible for a child~~  
~~19 to return safely home. The court shall examine the proposed family~~  
~~20 case plan or any modification thereof, and upon a finding by the~~  
~~21 court that the plan or modified plan can be easily communicated,~~  
~~22 explained and discussed so as to make the participants accountable~~  
~~23 and able to understand the reasons for any success or failure under~~  
~~24 the plan, the court shall inform the participants of the probable~~

1 action of the court if goals are met or not met.

2 ~~(c) (1) In addition to the family case plan provided for under~~  
3 ~~the provisions of subsection (b) of this section, the department~~  
4 ~~shall prepare, as an appendix to the family case plan, an expanded~~  
5 ~~"worker's case plan". As utilized by the department under the~~  
6 ~~provisions of this section, the worker's case plan shall consist of~~  
7 ~~the following:~~

8 ~~(A) All of the information contained in the family case plan~~  
9 ~~described in subsection © of this section;~~

10 ~~(B) A prognosis for each of the goals projected in the family~~  
11 ~~case plan, assessing the capacity of the parent, guardian or~~  
12 ~~custodian to achieve the goal and whether available treatment~~  
13 ~~services are likely to have the desired outcome;~~

14 ~~(C) A listing of the criteria to be used to assess the degree~~  
15 ~~to which each goal is attained;~~

16 ~~(D) A description of when and how the department will decide~~  
17 ~~when and how well each goal has been attained;~~

18 ~~(E) If possible, a listing of alternative methods and specific~~  
19 ~~services which the caseworker or caseworkers may consider using if~~  
20 ~~the original plan does not work; and~~

21 ~~(F) A listing of criteria to be used in determining when the~~  
22 ~~family case plan should be terminated.~~

23 ~~(2) Because the nature of the information contained in the~~  
24 ~~worker's case plan described in subdivision (1) of this subsection~~

~~1 may, in some cases, be construed to be negative with respect to the  
2 probability of change, or may be viewed as a caseworker's attempt to  
3 impose personal values into the situation, or may raise barriers of  
4 hostility and resistance between the caseworker and the family  
5 members, the worker's case plan shall not be made available to the  
6 court or to persons outside of the department, but shall be used by  
7 the department for the purpose of confirming the effectiveness of  
8 the family case plan or for determining that changes in the family  
9 case plan need to be made.~~

10       ~~(d)~~ (c) In furtherance of the provisions of this article, the  
11 department shall, within the limits of available funds, establish  
12 programs and services for the following purposes:

13       (1) For the development and establishment of training programs  
14 for professional and paraprofessional personnel in the fields of  
15 medicine, law, education, social work and other relevant fields who  
16 are engaged in, or intend to work in, the field of the prevention,  
17 identification and treatment of child abuse and neglect; and  
18 training programs for children, and for persons responsible for the  
19 welfare of children, in methods of protecting children from child  
20 abuse and neglect;

21       (2) For the establishment and maintenance of centers, serving  
22 defined geographic areas, staffed by multidisciplinary teams and  
23 community teams of personnel trained in the prevention,  
24 identification, and treatment of child abuse and neglect cases, to

1 provide a broad range of services related to child abuse and  
2 neglect, including direct support ~~and supervision of satellite~~  
3 ~~centers and attention homes,~~ as well as providing advice and  
4 consultation to individuals, agencies and organizations which  
5 request such services;

6 (3) For furnishing services of multidisciplinary teams and  
7 community teams, trained in the prevention, identification and  
8 treatment of child abuse and neglect cases, on a consulting basis to  
9 small communities where such services are not available;

10 (4) For other innovative programs and projects that show  
11 promise of successfully identifying, preventing or remedying the  
12 causes of child abuse and neglect, including, but not limited to,  
13 programs and services designed to improve and maintain parenting  
14 skills, programs and projects for parent self-help, and for  
15 prevention and treatment of drug-related child abuse and neglect;  
16 and

17 (5) Assisting public agencies or nonprofit private  
18 organizations or combinations thereof in making applications for  
19 grants from, or in entering into contracts with, the secretary of  
20 the federal department of health and human services for  
21 demonstration programs and projects designed to identify, prevent  
22 and treat child abuse and neglect.

23 ~~(e)~~ (d) Agencies, organizations and programs funded to carry  
24 out the purposes of this section shall be structured so as to comply

1 with any applicable federal law, any regulation of the federal  
2 Department of Health and Human Services or the secretary thereof,  
3 and any final comprehensive plan of the federal advisory board on  
4 child abuse and neglect. In funding organizations, the department  
5 shall, to the extent feasible, ensure that parental organizations  
6 combating child abuse and neglect receive preferential treatment.

7 **ARTICLE 7. GENERAL PROVISIONS.**

8 **§49-7-1. Confidentiality of records**

9 (a) Except as otherwise provided in this chapter or by order of  
10 the court, all records and information concerning a child or  
11 juvenile which are maintained by the Division of Juvenile Services,  
12 the Department of Health and Human Resources, a child agency or  
13 facility, court or law-enforcement agency shall be kept confidential  
14 and shall not be released or disclosed to anyone, including any  
15 federal or state agency.

16 (b) Notwithstanding the provisions of subsection (a) of this  
17 section or any other provision of this code to the contrary, records  
18 concerning a child or juvenile, except adoption records ~~juvenile~~  
19 ~~court records~~ and records disclosing the identity of a person making  
20 a complaint of child abuse or neglect shall be made available:

21 (1) Where otherwise authorized by this chapter;

22 (2) To:

23 (A) The child;

24 (B) A parent whose parental rights have not been terminated; or



1 (C) The attorney of the child or parent;

2 (3) With the written consent of the child or of someone  
3 authorized to act on the child's behalf; or

4 (4) Pursuant to an order of a court of record: *Provided*, That  
5 the court shall review such record or records for relevancy and  
6 materiality to the issues in the proceeding and safety, and may  
7 issue an order to limit the examination and use of the records or  
8 any part thereof.

9 (c) In addition to those persons or entities to whom  
10 information may be disclosed under subsection (b) of this section,  
11 information related to child abuse or neglect proceedings, except  
12 information relating to the identity of the person reporting or  
13 making a complaint of child abuse or neglect, shall be made  
14 available, upon request, to:

15 (1) Federal, state or local government entities, or any agent  
16 of such entities, including law-enforcement agencies and prosecuting  
17 attorneys, having a need for such information in order to carry out  
18 its responsibilities under law to protect children from abuse and  
19 neglect;

20 (2) The child fatality review team;

21 (3) Child abuse citizen review panels;

22 (4) Multidisciplinary investigative and treatment teams; or

23 (5) A grand jury, circuit court or family ~~law master~~ court,

24 upon a finding that information in the records is necessary for the

1 determination of an issue before the grand jury, circuit court or  
2 family ~~law master~~ court.

3 (d) In the event of a child fatality or near fatality due to  
4 child abuse and neglect, information relating to such fatality or  
5 near fatality shall be made public by the Department of Health and  
6 Human Resources and to the entities described in subsection (c) of  
7 this section, all under the circumstances described in that  
8 subsection: *Provided*, That information released by the Department of  
9 Health and Human Resources pursuant to this subsection shall not  
10 include the identity of a person reporting or making a complaint of  
11 child abuse or neglect. For purposes of this subsection, "near  
12 fatality" means any medical condition of the child which is  
13 certified by the attending physician to be life-threatening.

14 (e) Except in juvenile proceedings which are transferred to  
15 criminal proceedings, law-enforcement records and files concerning  
16 a child or juvenile shall be kept separate from the records and  
17 files of adults and not included within the court files. Law-  
18 enforcement records and files concerning a child or juvenile shall  
19 only be open to inspection pursuant to the provisions of sections  
20 seventeen and eighteen, article five of this chapter.

21 (f) Any person who willfully violates the provisions of this  
22 section is guilty of a misdemeanor and, upon conviction thereof,  
23 shall be fined not more than \$1,000, or confined in the county or  
24 regional jail for not more than six months, or be both fined and

1 confined. A person convicted of violating the provisions of this  
2 section shall also be liable for damages in the amount of \$300 or  
3 actual damages, whichever is greater.

4 (g) Notwithstanding the provisions of this section, or any  
5 other provision of this code to the contrary, the name and identity  
6 of any juvenile adjudicated or convicted of a violent or felonious  
7 crime shall be made available to the public.

8 **§49-7-36. Quarterly status review and yearly permanency hearings.**

9 (a) For each child who remains in foster care as a result of a  
10 juvenile proceeding or as a result of a child abuse and neglect  
11 proceeding, the circuit court with the assistance of the  
12 multidisciplinary treatment team shall conduct quarterly status  
13 reviews in order to determine the safety of the child, the  
14 continuing necessity for and appropriateness of the placement, the  
15 extent of compliance with the case plan, and the extent of progress  
16 which has been made toward alleviating or mitigating the causes  
17 necessitating placement in foster care, and to project a likely date  
18 by which the child may be returned to and safety maintained in the  
19 home or placed for adoption or legal guardianship.

20 (b) For each transitioning adult as that term is defined in  
21 §49-2B-2(x) who remains in foster care, the circuit court shall  
22 conduct status review hearings as described in subsection (a) of  
23 this section once every three months until permanency is achieved.

24 (c) For each child or transitioning adult who continues to

1 remain in foster care, the circuit court shall conduct a permanency  
2 hearing no later than twelve months after the date the child or  
3 transitioning adult is considered to have entered foster care, and  
4 at least once every twelve months thereafter until permanency is  
5 achieved. For purposes of permanency planning for transitioning  
6 adults, the circuit court shall make factual findings and  
7 conclusions of law as to whether the department made reasonable  
8 efforts to finalize a permanency plan to prepare a transitioning  
9 adult for emancipation or independence or another approved  
10 permanency option such as, but not limited to, adoption or legal  
11 guardianship pursuant to the West Virginia Guardianship and  
12 Conservatorship Act.

13 (d) Nothing in this section shall be construed to abrogate the  
14 responsibilities of the circuit court from conducting required  
15 hearings as provided in other provisions of this code, procedural  
16 court rules, or setting required hearings at the same time.

NOTE: This bill is requested by the Supreme Court of Appeal's Court Improvement Program Oversight Board. The purpose of this legislation is to promote the safety, well-being and timely permanency of children in child abuse and neglect, family court and/or juvenile cases. This bill also makes necessary amendments to the West Virginia code for compliance with federal law or consistency with the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings or the Rules of Juvenile Procedure. This bill defines "court appointed special advocate program" and outlines the standards for the program. The bill also requires judges to provide in the court order the reasons why a child is being placed out-of-state as opposed to in-state. The bill clarifies the multidisciplinary treatment planning process for everyone and establishes a process specific to child abuse and

neglect cases as well as status offenders and delinquents. The bill also requires attorneys appointed in child abuse and neglect cases to have eight hours of training annually. This bill provides that reasonable efforts to preserve the family is not required when the person is required by law to register as a sex offender. It also provides when a dispositional order may be modified. The bill clarifies that the circuit court has exclusive jurisdiction over child abuse and neglect matters. The bill provides a process for permanency hearings and permanent placement reviews. The bill authorizes family court to order a child be taken into emergency custody under certain circumstances. The bill also provides guidelines for unified child and family case plans and requires quarterly status review hearings and yearly permanency hearings for transitioning adults.

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

§49-5d-3b, §49-5D-3c, §49-6-9a and §49-7-36 are new; therefore, strike-throughs and underscoring have been omitted.