

H. B. 2603

(By Delegates Morgan, Stephens, Staggers,
Eldridge, Jones, Lynch, Paxton, Hartman,
M. Smith, Barrett and Skinner)

[Introduced February 22, 2013; referred to the
Committee on Government Organization then the Judiciary.]

A BILL to repeal §48-26-404, §48-26-405, §48-26-601, §48-26-602,
§48-26-901, §48-26-902, §48-26-1003, §48-26-1005, §48-26-1006
and §48-26-1007 of the Code of West Virginia, 1931, as
amended; to amend and reenact §48-26-202, §48-26-203,
§48-26-204, §48-26-205, §48-26-206, §48-26-301, §48-26-401,
§48-26-402, §48-26-403, §48-26-406, §48-26-603, §48-26-604,
§48-26-701, §48-26-1001, §48-26-1002 and §48-26-1004 of said
code; and to amend said code by adding thereto nine new
sections, designated §48-26-207, §48-26-208, §48-26-209,
§48-26-210, §48-26-211, §48-26-212, §48-26-213, §48-26-214 and
§48-26-407, all relating to the Family Protection Services
Board; revising definitions; adding definitions; revising
qualifications for membership on the board; adding two new
members to the board; clarifying that the two ex officio
members have voting privileges; providing for appointments for
unexpired terms; providing appointments for members who become

1 disqualified; authorizing legislative rules; increasing the
2 percentage of board funds which may be used for administrative
3 functions; authorizing the board to develop formulas to direct
4 funds to certain programs; prohibiting programs from falsely
5 representing that they are licensed; authorizing the board to
6 develop preliminary and full application forms; providing for
7 conditional, provisional and full licenses; authorizing the
8 board to issue licenses for up to three years; authorizing the
9 board to issue notices to cease and desist; setting forth
10 procedures for hearings and appeals; requiring programs to
11 report annually to the board; and providing confidentiality
12 protections for programs participants.

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

14 That §48-26-404, §48-26-405, §48-26-601, §48-26-602,
15 §48-26-901, §48-26-902, §48-26-1003, §48-26-1005, §48-26-1006 and
16 §48-26-1007 of the Code of West Virginia, 1931, as amended, be
17 repealed; that §48-26-202, §48-26-203, §48-26-204, §48-26-205,
18 §48-26-206, §48-26-301, §48-26-401, §48-26-402, §48-26-403,
19 §48-26-406, §48-26-603, §48-26-604, §48-26-701, §48-26-1001,
20 §48-26-1002 and §48-26-1004 of said code be amended and reenacted;
21 and that said code be amended by adding thereto nine new sections,
22 designated §48-26-207, §48-26-208, §48-26-209, §48-26-210,
23 §48-26-211, §48-26-212, §48-26-213, §48-26-214 and §48-26-407, all
24 to read as follows:

1 **ARTICLE 26. DOMESTIC VIOLENCE ACT.**

2 PART 2. DEFINITIONS.

3 **§48-26-202. Advocacy defined.**

4 "Advocacy" means assisting victims and survivors of domestic
5 violence, dating violence, sexual assault, stalking or human
6 trafficking, and their children, in securing rights, remedies and
7 services, by directly providing for, or referring to public and
8 private agencies to provide for, safety planning; shelter; housing;
9 legal services; outreach; counseling; case management; information
10 and referral; training; employment; child care; health care;
11 transportation; financial literacy education, financial planning
12 and related economic empowerment services; parenting and other
13 educational services; and other support services.

14 **§48-26-203. Batterer Intervention and Prevention Program defined.**

15 "Batterer intervention and prevention program", previously
16 referred to as a program of intervention for perpetrators, means a
17 licensed educational program that provides classes to individuals
18 who commit acts of domestic violence or abuse, offering nonviolent
19 strategies and values that promote respect and equality in intimate
20 partner relationships.

21 **§48-26-204. Board defined.**

22 "Board" means the Family Protection Services Board created
23 pursuant to Chapter 53 of the Acts of the Legislature of 1989, and

1 subsequently recodified as section three hundred one of this
2 article.

3 **§48-26-205. Closure defined.**

4 "Closure" means the temporary or permanent prohibition of
5 specified services and the corresponding suspension of licensure of
6 a program or program component which violates the standards
7 established by the board or which threatens the health, well being
8 or safety of its program participants or staff.

9 **§48-26-206. Department defined.**

10 "Department" means the Department of Health and Human
11 Resources.

12 **§48-26-207. Domestic Violence Legal Services Fund defined.**

13 "Domestic Violence Legal Services Fund" means the special
14 revenue account established by section six hundred three of this
15 article, for the purposes set forth in that section.

16 **§48-26-208. Domestic violence program defined.**

17 "Domestic violence program" means a licensed program of a
18 locally controlled nonprofit organization, established primarily
19 for the purpose of providing advocacy services, comprising both a
20 shelter component and an outreach component, to victims of domestic
21 violence, dating violence, sexual assault, stalking or human
22 trafficking, and their children: *Provided*, That the board may
23 temporarily or permanently close either the shelter component or

1 the outreach component of a domestic violence program.

2 **§48-26-209. Family Protection Fund defined.**

3 "Family Protection Fund" means the special revenue account
4 established by Chapter 74 of the Acts of the Legislature of 1981,
5 held by the department, for the purpose of collecting marriage
6 license fees pursuant to section six hundred four, article two of
7 this chapter and section ten, article one, chapter fifty-nine of
8 this code, divorce surcharge fees pursuant to section
9 twenty-eight-a, article one, chapter fifty-nine of this code, and
10 fees for failure to present a premarital education course
11 completion certificate pursuant to section ten, article one,
12 chapter fifty-nine of this code, and distributed to licensed
13 domestic violence programs, in accordance with the formula
14 designated by the board.

15 **§48-26-210. Intimate partner defined.**

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

20 **§48-26-211. Licenses defined.**

21 (a) "Conditional license" means a license issued for up to
22 ninety days, to programs that have violations of safety or
23 accountability standards which may threaten the health, well-being
24 or safety of its program participants or staff, or the responsible

1 operation of the program, or that have a history or pattern of
2 noncompliance with established standards.

3 (b) "Provisional license" means a license issued for up to
4 one hundred and eighty days, to programs that are in noncompliance
5 with nonlife threatening safety, programmatic, facility or
6 administrative standards, which may be extended for an additional
7 six months, if the board determines that the program is making
8 active progress toward compliance.

9 (c) "Full license" means a license issued for up to the
10 maximum licensure period of three years, to programs that are in
11 compliance with the standards established by the board and have no
12 violations of safety or accountability standards which may threaten
13 the health, well-being or safety of its program participants or
14 staff, or the responsible operation of the program.

15 **§48-26-212. Monitored parenting and exchange defined.**

16 (a) "Monitored parenting" means the contact between a
17 noncustodial parent, guardian or other adult and one or more
18 children, in the presence of a third person who monitors the
19 contact to promote the safety of the participants.

20 (b) "Monitored exchange" means the observation of movement of
21 a child or children from the custodial parent or guardian to the
22 noncustodial parent or other adult as court ordered at the
23 beginning of the visit and back to the custodial parent or guardian
24 at the end of the visit, without allowing contact between the

1 adults.

2 (c) "Monitored parenting and exchange program" means a
3 licensed program offered by a locally controlled nonprofit
4 organization for purposes of providing a neutral, safe and
5 child-friendly environment to allow the child or children access to
6 the noncustodial parent or other adult without allowing contact
7 between the custodial and noncustodial adults.

8 **§48-26-213. Outreach defined.**

9 "Outreach" means a licensed domestic violence program's
10 community-based activities to increase awareness and availability
11 of services, in every county within the program's regional service
12 area, to victims and survivors of domestic violence, dating
13 violence, sexual assault, stalking or human trafficking, and their
14 children.

15 **§48-26-214. Shelter defined.**

16 "Shelter" means residential services offered by a licensed
17 domestic violence program on a temporary basis, to persons who are
18 victims of domestic violence, dating violence, sexual assault,
19 stalking or human trafficking, and their children.

20 PART 3. FAMILY PROTECTION SERVICES BOARD.

21 **§48-26-301. Family protection services board continued; terms.**

22 (a) The family protection services board, ~~previously created,~~
23 is continued.

1 (b) Membership of the board is comprised of ~~five~~ seven
2 persons. The Governor, with the advice and consent of the Senate,
3 shall appoint ~~three~~ five members of the board who meet the
4 following qualifications:

5 (1) One appointed member must be a ~~commissioner of a shelter~~
6 director of a licensed domestic violence program, selected from a
7 list nominated by the board;

8 (2) One ~~appointed~~ member must be a member of a ~~major trade~~
9 ~~association that represents shelters across the state~~ the West
10 Virginia Coalition Against Domestic Violence, selected from a list
11 nominated by the West Virginia Coalition Against Domestic Violence;

12 (3) One member must be a representative of a batterer
13 intervention and prevention program licensed by the board, selected
14 from a list nominated by the board;

15 (4) One member must be an administrator of the West Virginia
16 Supreme Court of Appeals or his or her designee from the Division
17 of Family Court Services who is familiar with monitored parenting
18 and exchange program services, or a representative of a licensed
19 monitored parenting and exchange program, selected from a list
20 nominated by the board; and

21 (5) ~~The final gubernatorial appointee~~ One member must be a
22 ~~member of the public~~ citizen who is a resident of this state and
23 who is not employed by, under contract with or volunteers for a
24 program licensed by the board, and who is knowledgeable about

1 services for victims and survivors of domestic violence, selected
2 from a list nominated by the board;

3 ~~(c) The other two members are the~~ secretary of the Department
4 of Health and Human Resources, or his or her designee, and the
5 ~~chairperson~~ chair of the Governor's Committee on Crime, Delinquency
6 and Correction, or his or her designee shall serve as ex officio,
7 voting members.

8 (d) No more than one person who is employed by, under contract
9 with or volunteers for any organization that is licensed to operate
10 any program under the provisions of this article may serve on the
11 board at the same time.

12 ~~(b)~~ (e) The terms of the ~~three~~ five members appointed by the
13 Governor are ~~staggered terms of~~ for three years, staggered in
14 accordance with prior enactments of this act. ~~The initial term of~~
15 ~~the commissioner of the shelter is a one-year term, the initial~~
16 ~~term of the representative of the trade association is a two-year~~
17 ~~term and the initial term of the appointed member of the public is~~
18 ~~a three-year term.~~

19 ~~(c) In the event that a member of the board ceases to be~~
20 ~~qualified for appointment, then his or her appointment terminates.~~

21 ~~(g)~~ (f) If a member resigns or is unable to complete his or
22 her term or ceases to be qualified, the Governor shall appoint
23 within ninety days a person who meets the qualifications of this
24 section to serve the remainder of the unexpired term, from a list

1 nominated by the board.

2 PART 4. DUTIES OF FAMILY PROTECTION SERVICES BOARD.

3 **§48-26-401. Powers and duties of board. generally.**

4 ~~It is the duty of the board to:~~

5 (a) The board shall:

6 (1) ~~Regulate its procedural practice;~~ Propose rules for
7 legislative approval, in accordance with the provisions of article
8 three, chapter twenty-nine-a of this code, to implement the
9 provisions of this article and any applicable federal guidelines;

10 (2) Receive and consider applications for ~~the development of~~
11 ~~shelters~~ licensure of domestic violence programs, batterer
12 intervention and prevention programs and monitored parenting and
13 exchange programs;

14 (3) ~~Facilitate the formation and operation of shelters;~~ Assess
15 the need for domestic violence programs, batterer intervention and
16 prevention programs and monitored parenting and exchange programs,
17 including licensure preapplication and application processes;

18 (4) ~~Promulgate rules to implement the provisions of this~~
19 ~~article and any applicable federal guidelines;~~ Conduct licensure
20 renewal reviews of domestic violence programs, batterer
21 intervention and prevention programs and monitored parenting and
22 exchange programs, which will ensure the safety, well-being and
23 health of the programs' participants and staff;

24 (5) ~~Advise the secretary on matters of concern relative to his~~

1 ~~or her responsibilities under this article~~ For each fiscal year,
2 expend from the Family Protection Fund a sum not to exceed fifteen
3 percent for the costs of administering the provisions of this
4 article, and direct the Department of Health and Human Resources to
5 distribute one half of the remaining funds equally and the other
6 half of the remaining funds proportionately, to licensed domestic
7 violence programs, in accordance with a formula determined by the
8 board;

9 (6) ~~Study issues pertinent to family protection shelters,~~
10 ~~programs for domestic violence victims, and report the results~~
11 Submit an annual report on the status of programs licensed under
12 the provisions of this article to the Governor and the Legislature;

13 (7) Conduct hearings as necessary under this article; and

14 (8) ~~Delegate to the secretary such powers and duties of the~~
15 ~~board as the board may deem appropriate to delegate, including, but~~
16 ~~not limited to, the authority to approve, disapprove, revoke or~~
17 ~~suspend licenses;~~ Collect data about licensed programs for use in
18 an annual report of the board.

19 (9) ~~Deliver funds to shelters within forty-five days of the~~
20 ~~approval of a proposal for such shelters;~~

21 (10) ~~Establish a system of peer review which will ensure the~~
22 ~~safety, well-being and health of the clients of all shelters~~
23 ~~operating in the state;~~

24 (11) ~~Evaluate annually each funded shelter to determine its~~

1 ~~compliance with the goals and objectives set out in its original~~
2 ~~application for funding or subsequent revisions;~~

3 ~~(12) To award to shelters, for each fiscal year, ninety five~~
4 ~~percent of the total funds collected and paid over during the~~
5 ~~fiscal year to the special revenue account established pursuant to~~
6 ~~section 2-604 of this chapter and to expend, during said period a~~
7 ~~sum not in excess of five percent of said funds for cost of~~
8 ~~administering provisions of this article;~~

9 ~~(13) Establish and enforce system of standards for annual~~
10 ~~licensure for all shelters and programs in the state;~~

11 ~~(14) Enforce standards; and~~

12 ~~(15) Review its rules biannually.~~

13 (b) The board may:

14 (1) Advise the Secretary of the Department of Health and
15 Human Resources and the Chair of the Governor's Committee on Crime,
16 Delinquency and Correction on matters of concern relative to their
17 responsibilities under this article;

18 (2) Delegate to the Secretary of the Department of Health and
19 Human Resources such powers and duties of the board as the board
20 considers appropriate to delegate, including, but not limited to,
21 the authority to approve, disapprove, revoke or suspend licenses;

22 (3) Advise administrators of state or federal funds of
23 licensure violations and closures of programs; and

24 (4) Exercise all other powers necessary to implement the

1 provisions of this article.

2 **§48-26-402. Duties regarding licenses for shelters and programs**
 3 **Requirements, qualifications and terms of**
 4 **licensure; collaboration to assist programs.**

5 (a) No domestic violence program, batterer intervention and
 6 prevention program or monitored parenting and exchange program may
 7 represent that it is licensed unless it is licensed by the board
 8 pursuant to the provisions of this article and the legislative
 9 rules promulgated pursuant to this article.

10 ~~(a)~~ (b) The board shall establish a preliminary application
 11 and full application forms for the initial licensing all shelters
 12 and programs of domestic violence programs, batterer intervention
 13 and prevention programs and monitored parenting and exchange
 14 programs.

15 (1) To meet basic eligibility requirements an applicant for
 16 licensure must complete a preliminary application form to
 17 demonstrate local need for the proposed service, method of
 18 governance and accountability, administrative and programmatic
 19 design, and fiscal efficiency. The board shall respond in writing
 20 within sixty days of receipt of the preliminary application;

21 (2) If the board approves the preliminary application, the
 22 applicant may complete a full application form;

23 (3) The board shall determine whether all documentation set
 24 forth on the licensure checklist has been submitted, and may

1 request supplemental or clarifying information or documentation;
2 and

3 (4) The board shall grant or deny a license within sixty days
4 of the receipt of the completed full application form and all
5 supplemental or clarifying information or documentation requested
6 by the board.

7 ~~(b)~~ (c) Licenses may be granted or renewed on an annual basis
8 ~~with all such licenses having a term of one year for periods not to~~
9 ~~exceed three years: commencing on the first day of July and~~
10 ~~terminating on the thirtieth day of June of the next year~~ Provided,
11 That the board may conduct licensure reviews at any time during the
12 licensure period, and may downgrade, suspend or revoke a license in
13 accordance with the provisions of this article.

14 ~~(c) The board shall grant or deny any license within~~
15 ~~forty-five days of the receipt of the application.~~

16 (d) The license granted by the board shall be ~~conspicuously~~
17 prominently displayed by the licensees.

18 (e) The board may grant a provisional license ~~or grant a~~
19 ~~waiver of licensure if the board deems such waiver or provisional~~
20 ~~license necessary for the shelter or program. All such waivers or~~
21 ~~provisional licenses shall be reviewed semi-annually.~~ for up to one
22 hundred and eighty days, to a program which is noncompliant with
23 non-life threatening safety, programmatic, facility or
24 administrative standards. A provisional license may be extended

1 for up to an additional one hundred and eighty days, if the board,
2 in its sole discretion, determines that the program is making
3 active progress toward compliance.

4 (f) The board may grant a conditional license for up to ninety
5 days to a program which has violations of safety or accountability
6 standards which may threaten the health, well-being or safety of
7 its participants or staff, or the responsible operation of the
8 program, or that have a history or pattern of noncompliance with
9 established standards. If a program does not correct the
10 violations within the conditional license period, the board may
11 institute closure proceedings.

12 (g) The Department of Health and Human Resources, the Division
13 of Justice and Community Services, the Family Protection Services
14 Board, the WV Coalition Against Domestic Violence, the West
15 Virginia Supreme Court of Appeals and the Division of Corrections
16 may, collectively or in any combination as appropriate to the
17 program, collaborate to provide technical assistance to prevent and
18 resolve deficiencies in a program's ability to meet the standards
19 to operate and maintain licensure.

20 (h) If the board obtains information that a person or persons
21 has engaged in, is engaging in or is about to engage in an act
22 which constitutes or will constitute a violation of the provisions
23 of this article or the legislative rules promulgated pursuant to
24 this article, it may issue a notice to the person or persons to

1 cease and desist the act, or apply to the circuit court for an
2 order enjoining the act. Upon a showing that the person has
3 engaged, is engaging or is about to engage in such an act, the
4 court may order an injunction, restraining order or other order as
5 the court considers appropriate.

6 **§48-26-403. Duties regarding Legislative rules.**

7 (a) The board shall propose rules for legislative approval in
8 accordance with the provisions of article three, chapter
9 twenty-nine-a of this code to effectuate the provisions of this
10 article.

11 (b) The rules shall include, at a minimum:

12 (1) Operating procedures of the board;

13 (2) Minimum standards, including, but not limited to,
14 governance, administration, safety, referral process, intake,
15 services, financial accountability, staffing, personnel policies,
16 communication, program participant records, service plans,
17 confidentiality, program evaluation, facility requirements,
18 reports, restrictions, and other requirements in this article, for
19 licensure of:

20 (A) Domestic violence programs, including requirements for
21 both shelter and outreach components;

22 (B) Community-based, local government and Division of
23 Corrections batterer intervention and prevention programs; and

24 (C) Monitored parenting and exchange programs; and

1 (3) A licensure checklist to determine the adequacy of
2 applicants and licensees to meet licensure standards, to determine
3 eligibility for a full license, provisional license, conditional
4 license or no license.

5 (c) The rules in effect as of the effective date of the
6 reenactment of this section will remain in effect until modified,
7 amended or repealed provided that they are not inconsistent with
8 this article.

9 **§48-26-406. Closure of ~~shelters; provisional licensee waivers~~**
10 **programs.**

11 (a) The board may close any ~~shelter~~ program which violates the
12 standards established under this article ~~and or~~ or which threatens the
13 health, well-being ~~and or~~ or safety of its ~~clients~~ participants or
14 staff: Provided, That if a shelter is closed, the governing body
15 of the program, in conjunction with the board, shall establish a
16 plan to place ~~such clients~~ the participants in other shelters or
17 alternative housing. ~~and to develop a method to continue serving~~
18 ~~the areas served by the shelter to be closed.~~

19 ~~(b) The board may place a shelter, which violates standards~~
20 ~~established under this article and which threatens the health, well~~
21 ~~being and safety of its clients, under receivership and operate~~
22 ~~said shelter. The board shall have access and may use all assets~~
23 ~~of the shelter.~~

24 ~~(c) (b) In order to close or place a shelter in receivership~~

1 domestic violence program or one of its components, a batterer
2 intervention and prevention program or a monitored parenting and
3 exchange program, the board shall hold a public hearing within the
4 ~~confines of municipality or county in which the shelter is located.~~
5 The board, by September 1, 1989, shall establish rules and
6 regulations to govern the conduct of such hearings: *Provided,* That
7 ~~four members of the board~~ must vote unanimously in the affirmative.
8 ~~before a shelter is closed or placed in receivership.~~

9 ~~(d) (c) If a~~ either the shelter disagrees with the findings of
10 ~~the board, the shelter may appeal such ruling to the circuit court~~
11 ~~of Kanawha County or the circuit court of the county where the~~
12 ~~shelter is located pursuant to the provisions of section four,~~
13 ~~article five, chapter twenty-nine-a of this code~~ component or the
14 outreach component of a domestic violence program is closed, the
15 remaining component of the program may continue to be licensed and
16 to receive funds.

17 **§48-26-407. Hearing procedures; judicial review.**

18 (a) When a license for a program is downgraded or discontinued
19 through permanent or temporary closure and the governing body of
20 the program believes that the downgrade or discontinuation is in
21 violation of this article or the legislative rules promulgated
22 pursuant to this article, the program's governing body is entitled
23 to a hearing before the board.

24 (b) Hearings shall be held in accordance with the provisions

1 of article five, chapter twenty-nine-a of this code.

2 (c) The board may conduct the hearing or elect to have a
3 hearing examiner or an administrative law judge conduct the
4 hearing. If the hearing is conducted by a hearing examiner or an
5 administrative law judge:

6 (1) The hearing examiner or administrative law judge shall be
7 licensed to practice law in this state and shall conform to the
8 Code of Conduct for Administrative Law Judges as set forth by the
9 Ethics Commission in legislative rule;

10 (2) At the conclusion of a hearing, the hearing examiner or
11 administrative law judge shall prepare a proposed written order
12 containing recommended findings of fact and conclusions of law and
13 may include recommended sanctions, including closure, if the board
14 so directs;

15 (3) The board may accept, reject, modify or amend the
16 recommendations of the hearing examiner or administrative law
17 judge; and

18 (4) If the board rejects, modifies or amends the
19 recommendations, the board shall state in the order a reasoned,
20 articulate justification based on the record for the rejection,
21 modification or amendment.

22 (d) Pursuant to the provisions of section one, article five,
23 chapter twenty-nine-a of this code, informal disposition may also
24 be made by the board by stipulation, agreed settlement, consent

1 order or default. Further, the board may suspend its decision and
2 place a license on conditional or provisional status.

3 (e) A licensee adversely affected by a decision of the board
4 entered after a hearing may seek an appeal to the Circuit Court, in
5 accordance with the provisions of section four, article five,
6 chapter twenty-nine-a of this code, and may appeal a decision of
7 the Circuit Court to the West Virginia Supreme Court of Appeals, in
8 accordance with the provisions of article six, chapter
9 twenty-nine-a of this code.

10 **§48-26-603. Domestic Violence Legal Services Fund.**

11 (a) There is ~~hereby established~~ continued in the State
12 Treasury a special revenue account, designated as the "Domestic
13 Violence Legal Services Fund," which shall be an appropriated fund
14 for receipt of grants, gifts, fees, or federal or state funds
15 designated for legal services for domestic violence victims.
16 Expenditures from the fund shall be limited to attorneys employed
17 or contracted by licensed domestic violence shelters programs, or
18 employed or contracted by nonprofit agencies West Virginia's
19 federally designated legal services program, its successor
20 organization or other nonprofit organization as determined by the
21 department, which establish a collaborative relationship with a
22 licensed domestic violence shelter program, that to provide civil
23 legal services to victims of domestic violence.

24 (b) Any court of this state may order a nonprevailing party to

1 pay an amount equivalent to the reasonable attorney's fee to which
2 the prevailing litigant would be entitled into the Domestic
3 Violence Legal Services Fund, established in subsection (a) of this
4 section, if the following circumstances occur:

5 (1) A prevailing litigant is entitled by statute or common law
6 to a reasonable attorney's fee, and

7 (2) The prevailing litigant's legal counsel informs the court
8 that no fee will be requested.

9 **§48-26-604. Annual reports of ~~shelters and~~ licensed programs.**
10 **receiving funds.**

11 ~~A shelter or program receiving funds pursuant to this article~~
12 ~~shall file an annual report with the board by the thirty-first day~~
13 ~~of each October for the prior fiscal year. The report shall include~~
14 ~~statistics on the number of persons served, the relationship of the~~
15 ~~victim to the abuser, services provided to the abuser, the number~~
16 ~~of referrals made for medical, psychological, financial,~~
17 ~~educational, vocational, child care or legal services and the~~
18 ~~results of an independent audit. No information contained in the~~
19 ~~report may identify any person served by the shelter or enable any~~
20 ~~person to determine the identity of any such person.~~

21 (a) All programs licensed pursuant to this article shall
22 report specific information annually as required by the board.

23 (b) No information contained in a report may identify any
24 person served by the program or enable any person to determine the

1 identity of any such person.

2 PART 7. CONFIDENTIALITY.

3 **§48-26-701. Confidentiality.**

4 (a) No program ~~or shelter receiving funds~~ licensed pursuant to
5 this article ~~shall~~ may disclose, reveal or release or be compelled
6 to disclose, reveal or release, any written records or personal or
7 personally identifying information about a program participant
8 created or maintained in providing services, regardless of whether
9 the information has been encoded, encrypted, hashed, or otherwise
10 protected, pursuant to this article except:

11 (1) Upon ~~written~~ consent of the person seeking or who has
12 sought services from the program; ~~or the shelter~~

13 (2) In any proceeding brought under sections four and five,
14 article six, chapter nine of this code or article six, chapter
15 forty-nine of this code;

16 (3) As mandated by article six-a, chapter forty-nine and
17 article six, chapter nine of this code;

18 (4) Pursuant to an order of any court based upon a finding
19 that said information is sufficiently relevant to a proceeding
20 before the court to outweigh the importance of maintaining the
21 confidentiality established by this section;

22 (5) To protect against a clear and substantial danger of
23 imminent injury by a ~~client~~ person receiving services to himself or
24 herself or another; or

1 ~~(6) For treatment or internal review purposes to the staff of~~
2 ~~any program or shelter if the client is also being cared for by~~
3 ~~other health professionals in the program or shelter. As~~
4 authorized by the releases signed by batterer intervention and
5 prevention program participants pursuant to the provisions of
6 subsection (b) of this section.

7 (b) Batterer intervention and prevention program participants
8 shall authorize the release of information by signing the following
9 releases:

10 (1) Allowing the provider to inform the victim or alleged
11 victim and the victim's advocates that the batterer is
12 participating in a batterer intervention and prevention program
13 with the provider and to provide information to the victim or
14 alleged victim and her or his advocates, if necessary, for the
15 victim's or alleged victim's safety;

16 (2) Allowing prior and current service providers to provide
17 information about the batterer to the provider;

18 (3) Allowing the provider, for good cause, to provide
19 information about the batterer to relevant legal entities,
20 including courts, parole officers, probation officers, child
21 protective services, adult protective services, law enforcement,
22 licensed domestic violence programs, or other referral agencies;

23 (4) Allowing the provider to report to the court, if the
24 participation was court ordered, and to the victim or alleged

1 victim, if she or he requests and provides a method of notification
2 and to his or her advocate, any assault, failure to comply with
3 program requirements, failure to attend the program, threat of harm
4 by the batterer, reason for termination and recommendations for
5 changes in the court order; and

6 (5) Allowing the provider to report to the victim or alleged
7 victim, or his or her advocate, without the participant's
8 authorization, all perceived threats of harm, the participant's
9 failure to attend and reason for termination.

10 (c) Monitored parenting and exchange programs may disclose to
11 the custodial parent or guardian without the noncustodial adult's
12 permission any perceived threat of harm or violation of the court
13 order or violation of the monitored parenting and exchange program
14 rules by the noncustodial adult.

15 (d) No monitored parenting and exchange program may release
16 information about the child without consent of the custodial parent
17 or guardian.

18 (e) In addition to the provisions set forth in this section,
19 the release of a victim's personally identifying information is
20 subject to the provisions of 42 U.S.C. § 13925(b)(2).

21 ~~(b)~~ (f) No consent or authorization for the transmission or
22 disclosure of confidential information shall be is effective
23 unless it is in writing and signed by the client program
24 participant whose information is being disclosed. Every person

1 signing an authorization shall be given a copy.

2 (g) In no circumstances may a victim of domestic violence,
 3 dating violence, sexual assault, or stalking be required to provide
 4 a consent to release his or her personally identifying information
 5 as a condition of eligibility for the services, nor may any
 6 personally-identifying information be shared in order to comply
 7 with federal or state reporting, evaluation, or data collection
 8 requirements: *Provided, That:* Nothing in this section prohibits a
 9 program from reporting suspected abuse or neglect, as defined by
 10 law and where specifically mandated by the state.

11 PART 10. ~~CHILDREN'S CENTERS FOR THE MONITORING OF CUSTODIAL~~
 12 ~~RESPONSIBILITY~~ MONITORED PARENTING AND EXCHANGE PROGRAMS.

13 **§48-26-1001. Legislative findings. Court orders; use of**
 14 **monitored parenting and exchange programs without**
 15 **court order.**

16 ~~The Legislature finds that increasing numbers of children are~~
 17 ~~living with one parent and that many of these children have been~~
 18 ~~exposed to violence in the home. The Legislature further finds that~~
 19 ~~it is sometimes in the best interests of children that the exercise~~
 20 ~~of custodial responsibility, including the exchange of children, be~~
 21 ~~monitored in order to observe and record the exercise of custodial~~
 22 ~~responsibility and to discourage or prevent inappropriate conduct.~~
 23 ~~For these reasons, the Legislature declares that a program be~~

1 ~~implemented to foster safe and neutral centers to monitor custodial~~
2 ~~responsibility, including the exchange of children, through the~~
3 ~~certification of children's centers for the monitoring of custodial~~
4 ~~responsibility.~~

5 (a) Judges and magistrates may order persons to apply to a
6 licensed monitored parenting and exchange program for monitored
7 parenting or monitored exchange of children: *Provided*, That a
8 licensed monitored parenting and exchange program may not be
9 required to perform duties which are beyond the program's capacity
10 or scope of services.

11 (b) Judges and magistrates may require a person to pay a
12 reasonable amount based on ability to pay and other relevant
13 criteria for any fee charged by a monitored parenting and exchange
14 program.

15 (c) Licensed monitored parenting and exchange programs may
16 receive referrals from judges, magistrates, child protective
17 services, attorneys and other agencies, for services under the
18 terms and conditions of those services as set forth in rules
19 promulgated by the board.

20 (d) Licensed monitored parenting and exchange programs may
21 serve self-referrals when the adult parties agree to the use of the
22 program.

23 **§48-26-1002. Exclusions.**

24 The provisions of this part do not apply to therapeutic or

1 supervised visitation or exchanges or any activity conducted by the
 2 state or others in abuse and neglect proceedings pursuant to
 3 articles six and six-a, chapter forty-nine of this code in which
 4 assessment, evaluation, formulation of a treatment plan, case
 5 management, counseling, therapy or similar activities occur.

6 **§48-26-1004. Contract by persons using center program.**

7 Every ~~center program~~ shall require that the ~~parents~~ parent,
 8 guardian or other ~~caretakers~~ adult sign a written contract prior to
 9 using the ~~center program~~ and that the use of the services provided
 10 by the ~~center program~~ can be terminated by the ~~center program~~ for
 11 violation of the contract.

NOTE: The purpose of this bill is to amend the Domestic Violence Act by adding and revising definitions; add two new members and revise qualifications for membership on the Family Protection Services Board; clarify that the two ex officio members have voting privileges; authorize legislative rules; increase the percentage of board funds which may be used for administrative functions; authorize the board to develop formulas to direct funds to certain programs; prohibit programs from falsely representing that they are licensed; authorize the board to develop preliminary and full application forms; provide for conditional, provisional and full licenses; authorize the board to issue licenses for up to three years; authorizing the board to issue notices to cease and desist; set forth procedures for hearings and appeals; require programs to report annually to the board; and provide confidentiality protections for programs participants.

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

§48-26-207, §48-26-208, §48-26-209, §48-26-210, §48-26-211, §48-26-212, §48-26-213, §48-26-214 and §48-26-407 are new;

therefore, they have been completely underscored.

§48-26-202, §48-26-203, §48-26-204, §48-26-205 and §48-26-206 have been completely rewritten; therefore, they have been completely underscored.