

COMMITTEE SUBSTITUTE

for

H. B. 2603

(BY DELEGATE(S) MORGAN, STEPHENS, STAGGERS,
ELDRIDGE, JONES, LYNCH, PAXTON, HARTMAN,
M. SMITH, BARRETT AND SKINNER)

(Originating in the Committee on the Judiciary)

[March 12, 2013]

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 disqualified; clarifying the board's powers and duties; authorizing legislative rules; increasing the percentage of board funds that may be used for administrative functions; authorizing the board to develop formulas to direct funds to certain programs; prohibiting programs from falsely representing that they are licensed; authorizing the board to develop preliminary and full application forms; providing for conditional, provisional and full licenses; authorizing the board to issue licenses for up to three years; updating provisions related to the closure of programs; authorizing the board to issue notices to cease and desist; setting forth procedures for hearings and appeals; clarifying the uses of the Domestic Violence Legal Services Fund; requiring programs

to report annually to the board; updating confidentiality protections for programs participants; and including provisions related to monitored parenting and exchange programs.

Be it enacted by the Legislature of West Virginia:

That §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§48-26-902, §48-26-1003, §48-26-1005, §48-26-1006 and §48-26-1007 of the Code of West Virginia, 1931, as amended, be repealed; that §48-26-202, §48-26-203, §48-26-204, §48-26-205, §48-26-206, §48-26-301, §48-26-401, §48-26-402, §48-26-403, §48-26-406, §48-26-603, §48-26-604,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 be amended and reenacted; and that said code be amended 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 to read as follows:

ARTICLE 26. DOMESTIC VIOLENCE ACT.

PART 2. DEFINITIONS.

§48-26-202. Advocacy defined.

- 1 “Advocacy” means assisting victims and survivors of
- 2 domestic violence, dating violence, sexual assault, stalking or
- 3 human trafficking, and their children, in securing rights,

4 remedies and services, by directly providing for, or referring to
5 public and private agencies to provide for, safety planning;
6 shelter; housing; legal services; outreach; counseling; case
7 management; information and referral; training; employment;
8 child care; health care; transportation; financial literacy
9 education, financial planning and related economic
10 empowerment services; parenting and other educational services;
11 and other support services.

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

1 “Batterer intervention and prevention program”, previously
2 referred to as a program of intervention for perpetrators, means
3 a licensed educational program that provides classes to
4 individuals who commit acts of domestic violence or abuse,
5 offering nonviolent strategies and values that promote respect
6 and equality in intimate partner relationships.

§48-26-204. Board defined.

1 “Board” means the Family Protection Services Board created
2 pursuant to Chapter 53 of the Acts of the Legislature of 1989,
3 and subsequently recodified as section three hundred one of this
4 article.

§48-26-205. Closure defined.

1 “Closure” means the temporary or permanent prohibition of
2 specified services and the corresponding suspension of licensure
3 of a program or program component that violates the standards
4 established by the board or that threatens the health, well being
5 or safety of its program participants or staff.

§48-26-206. Department defined.

1 “Department” means the Department of Health and Human
2 Resources.

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

1 “Domestic Violence Legal Services Fund” means the special
2 revenue account established by section six hundred three of this
3 article, for the purposes set forth in that section.

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

1 “Domestic violence program” means a licensed program of
2 a locally controlled nonprofit organization, established primarily
3 for the purpose of providing advocacy services, comprising both
4 a shelter component and an outreach component, to victims of
5 domestic violence, dating violence, sexual assault, stalking or
6 human trafficking, and their children: *Provided*, That the board

7 may temporarily or permanently close either the shelter
8 component or the outreach component of a domestic violence
9 program.

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

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

§48-26-210. Intimate partner defined.

1 “Intimate partner” means a current or former spouse, a
2 person with whom one shares a child in common, a person with
3 whom one is cohabiting or has cohabited, or a person with whom

4 one is or has been in a relationship of a romantic or intimate
5 nature.

§48-26-211. Licenses defined.

1 (a) “Conditional license” means a license issued for up to
2 ninety days, to programs that have violations of safety or
3 accountability standards that may threaten the health, well-being
4 or safety of its program participants or staff, or the responsible
5 operation of the program, or that have a history or pattern of
6 noncompliance with established standards.

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

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

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

1 (a) “Monitored parenting” means the contact between a
2 parent without custodial responsibility, guardian or other adult
3 and one or more children, in the presence of a third person who
4 monitors the contact to promote the safety of the participants.

5 (b) “Monitored exchange” means the observation of
6 movement of a child or children from the custodial responsibility
7 of one parent or guardian to the custodial responsibility of the
8 other parent or other adult without allowing contact between the
9 adults.

10 (c) “Monitored parenting and exchange program” means a
11 licensed program offered by a locally controlled nonprofit
12 organization for purposes of providing a neutral, safe and
13 child-friendly environment to allow the child or children access
14 to a parent or other adult without allowing contact between the
15 adults.

§48-26-213. Outreach defined.

1 “Outreach” means a licensed domestic violence program’s
2 community-based activities to increase awareness and
3 availability of services, in every county within the program’s

4 regional service area, to victims and survivors of domestic
5 violence, dating violence, sexual assault, stalking or human
6 trafficking, and their children.

§48-26-214. Shelter defined.

1 “Shelter” means residential services offered by a licensed
2 domestic violence program on a temporary basis, to persons who
3 are victims of domestic violence, dating violence, sexual assault,
4 stalking or human trafficking, and their children.

PART 3. FAMILY PROTECTION SERVICES BOARD.

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

1 (a) The family protection services board, ~~previously created,~~
2 is continued.

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

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

10 (2) One ~~appointed~~ member must be a ~~member of a major~~
11 ~~trade association that represents shelters across the state~~

12 representative of the West Virginia Coalition Against Domestic
13 Violence, selected from a list nominated by the West Virginia
14 Coalition Against Domestic Violence;

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

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

24 (5) ~~The final gubernatorial appointee~~ One member must be
25 a ~~member of the public~~ citizen who is a resident of this state and
26 who is not employed by, under contract with or a volunteer for
27 a program licensed by the board, and who is knowledgeable
28 about services for victims and survivors of domestic violence,
29 selected from a list nominated by the board;

30 (c) ~~The other two members are the~~ secretary of the
31 Department of Health and Human Resources, or his or her

32 designee, and the ~~chairperson~~ chair of the Governor's Committee
33 on Crime, Delinquency and Correction, or his or her designee
34 shall serve as ex officio, voting members.

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

39 ~~(b)~~ (e) The terms of the ~~three~~ five members appointed by the
40 Governor are ~~staggered terms of~~ for three years, staggered in
41 accordance with prior enactments of this act. ~~The initial term of~~
42 ~~the commissioner of the shelter is a one-year term, the initial~~
43 ~~term of the representative of the trade association is a two-year~~
44 ~~term and the initial term of the appointed member of the public~~
45 ~~is a three-year term.~~

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

49 ~~(g)~~ (f) If a member resigns or is unable to complete his or
50 her term or ceases to be qualified, the Governor shall appoint
51 within ninety days a person who meets the qualifications of this

52 section to serve the remainder of the unexpired term, from a list
53 nominated by the board.

PART 4. DUTIES OF FAMILY PROTECTION SERVICES BOARD.

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

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

2 (a) The board shall:

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

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

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

16 ~~(4) Promulgate rules to implement the provisions of this~~
17 ~~article and any applicable federal guidelines;~~ Conduct licensure

18 renewal reviews of domestic violence programs, batterer
19 intervention and prevention programs and monitored parenting
20 and exchange programs, that will ensure the safety, well-being
21 and health of the programs' participants and staff;

22 ~~(5) Advise the secretary on matters of concern relative to his~~
23 ~~or her responsibilities under this article~~ For each fiscal year,
24 expend from the Family Protection Fund a sum not to exceed
25 fifteen percent for the costs of administering the provisions of
26 this article, and direct the Department of Health and Human
27 Resources to distribute one half of the remaining funds equally
28 and the other half of the remaining funds in accordance with a
29 formula determined by the board, to licensed domestic violence
30 programs;

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

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

36 (8) ~~Delegate to the secretary such powers and duties of the~~
37 ~~board as the board may deem appropriate to delegate, including,~~

38 ~~but not limited to, the authority to approve, disapprove, revoke~~
39 ~~or suspend licenses;~~ Collect data about licensed programs for use
40 in an annual report of the board.

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

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

46 (11) ~~Evaluate annually each funded shelter to determine its~~
47 ~~compliance with the goals and objectives set out in its original~~
48 ~~application for funding or subsequent revisions;~~

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

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

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

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

59 (b) The board may:

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

64 (2) Delegate to the Secretary of the Department of Health
65 and Human Resources such powers and duties of the board as the
66 board considers appropriate to delegate, including, but not
67 limited to, the authority to approve, disapprove, revoke or
68 suspend licenses;

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

71 (4) Exercise all other powers necessary to implement the
72 provisions of this article.

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

1 (a) No domestic violence program, batterer intervention and
2 prevention program or monitored parenting and exchange
3 program may represent that it is licensed unless it is licensed by

4 the board pursuant to the provisions of this article and the
5 legislative rules promulgated pursuant to this article.

6 ~~(a)~~ (b) The board shall establish an preliminary application
7 and full application forms for the initial licensing all shelters and
8 programs of domestic violence programs, batterer intervention
9 and prevention programs and monitored parenting and exchange
10 programs.

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

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

19 (3) The board shall determine whether all documentation set
20 forth on the licensure checklist has been submitted, and may
21 request supplemental or clarifying information or
22 documentation; and

23 (4) The board shall grant or deny a license within sixty days
24 of the receipt of the completed full application form and all

25 supplemental or clarifying information or documentation
26 requested by the board.

27 ~~(b)~~ (c) Licenses may be granted or renewed ~~on an annual~~
28 ~~basis with all such licenses having a term of one year~~ for periods
29 not to exceed three years; commencing on the first day of July
30 ~~and terminating on the thirtieth day of June of the next year~~
31 Provided, That the board may conduct licensure reviews at any
32 time during the licensure period, and may downgrade, suspend
33 or revoke a license in accordance with the provisions of this
34 article.

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

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

39 (e) The board may grant a provisional license ~~or grant a~~
40 ~~waiver of licensure if the board deems such waiver or~~
41 ~~provisional license necessary for the shelter or program. All such~~
42 ~~waivers or provisional licenses shall be reviewed semi-annually.~~
43 for up to one hundred and eighty days, to a program that is
44 noncompliant with non-life threatening safety, programmatic,

45 facility or administrative standards. A provisional license may be
46 extended for up to an additional one hundred and eighty days, if
47 the board, in its sole discretion, determines that the program is
48 making active progress toward compliance.

49 (f) The board may grant a conditional license for up to ninety
50 days to a program that has violations of safety or accountability
51 standards that may threaten the health, well-being or safety of its
52 participants or staff, or the responsible operation of the program,
53 or that have a history or pattern of noncompliance with
54 established standards. If a program does not correct the
55 violations within the conditional license period, the board may
56 institute closure proceedings.

57 (g) The Department of Health and Human Resources, the
58 Division of Justice and Community Services, the Family
59 Protection Services Board, the WV Coalition Against Domestic
60 Violence, the West Virginia Supreme Court of Appeals and the
61 Division of Corrections may, collectively or in any combination
62 as appropriate to the program, collaborate to provide technical
63 assistance to prevent and resolve deficiencies in a program's
64 ability to meet the standards to operate and maintain licensure.

65 (h) If the board obtains information that a person or persons
 66 has engaged in, is engaging in or is about to engage in an act that
 67 constitutes or will constitute a violation of the provisions of this
 68 article or the legislative rules promulgated pursuant to this
 69 article, it may issue a notice to the person or persons to cease and
 70 desist the act, or apply to the circuit court for an order enjoining
 71 the act. Upon a showing that the person has engaged, is engaging
 72 or is about to engage in such an act, the court may order an
 73 injunction, restraining order or other order as the court considers
 74 appropriate.

§48-26-403. ~~Duties regarding~~ Legislative rules.

1 (a) The board shall propose rules for legislative approval in
 2 accordance with the provisions of article three, chapter
 3 twenty-nine-a of this code to effectuate the provisions of this
 4 article.

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

6 (1) Operating procedures of the board;

7 (2) Minimum standards, including, but not limited to,
 8 governance, administration, safety, referral process, intake,
 9 services, financial accountability, staffing, personnel policies,

10 communication, program participant records, service plans,
11 confidentiality, program evaluation, facility requirements,
12 reports, restrictions, and other requirements in this article, for
13 licensure of:

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

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

18 (C) Monitored parenting and exchange programs; and

19 (3) A licensure checklist to determine the adequacy of
20 applicants and licensees to meet licensure standards, to
21 determine eligibility for a full license, provisional license,
22 conditional license or no license.

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

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

1 (a) The board may close any ~~shelter which~~ program that
2 violates the standards established under this article and which or

3 that threatens the health, well-being and or safety of its clients
 4 participants or staff: *Provided, That if a shelter is closed, the*
 5 *governing body of the program, in conjunction with the board,*
 6 *shall establish a plan to place such clients the participants in*
 7 *other shelters or alternative housing. and to develop a method to*
 8 *continue serving the areas served by the shelter to be closed.*

9 (b) ~~The board may place a shelter, which violates standards~~
 10 ~~established under this article and which threatens the health, well~~
 11 ~~being and safety of its clients, under receivership and operate~~
 12 ~~said shelter. The board shall have access and may use all assets~~
 13 ~~of the shelter.~~

14 (c) (b) In order to close ~~or place~~ a shelter in receivership
 15 domestic violence program or one of its components, a batterer
 16 intervention and prevention program or a monitored parenting
 17 and exchange program, the board ~~shall hold a public hearing~~
 18 ~~within the confines of municipality or county in which the~~
 19 ~~shelter is located. The board, by September 1, 1989, shall~~
 20 ~~establish rules and regulations to govern the conduct of such~~
 21 ~~hearings: *Provided, That four members of the board must vote*~~
 22 unanimously in the affirmative. ~~before a shelter is closed or~~
 23 ~~placed in receivership.~~

24 ~~(d)~~ (c) If a either the shelter disagrees with the findings of
25 the board, the shelter may appeal such ruling to the circuit court
26 of Kanawha County or the circuit court of the county where the
27 shelter is located pursuant to the provisions of section four,
28 article five, chapter twenty-nine-a of this code component or the
29 outreach component of a domestic violence program is closed,
30 the remaining component of the program may continue to be
31 licensed and to receive funds.

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

1 (a) When a license for a program is downgraded or
2 discontinued through permanent or temporary closure and the
3 governing body of the program believes that the downgrade or
4 discontinuation is in violation of this article or the legislative
5 rules promulgated pursuant to this article, the program's
6 governing body is entitled to a hearing before the board.

7 (b) Hearings shall be held in accordance with the provisions
8 of article five, chapter twenty-nine-a of this code.

9 (c) The board may conduct the hearing or elect to have a
10 hearing examiner or an administrative law judge conduct the
11 hearing. If the hearing is conducted by a hearing examiner or an
12 administrative law judge:

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

17 (2) At the conclusion of a hearing, the hearing examiner or
18 administrative law judge shall prepare a proposed written order
19 containing recommended findings of fact and conclusions of law
20 and may include recommended sanctions, including closure, if
21 the board so directs;

22 (3) The board may accept, reject, modify or amend the
23 recommendations of the hearing examiner or administrative law
24 judge; and

25 (4) If the board rejects, modifies or amends the
26 recommendations, the board shall state in the order a reasoned,
27 articulate justification based on the record for the rejection,
28 modification or amendment.

29 (d) Pursuant to the provisions of section one, article five,
30 chapter twenty-nine-a of this code, informal disposition may also
31 be made by the board by stipulation, agreed settlement, consent
32 order or default. Further, the board may suspend its decision and
33 place a license on conditional or provisional status.

34 (e) A licensee adversely affected by a decision of the board
35 entered after a hearing may seek an appeal to the Circuit Court,
36 in accordance with the provisions of section four, article five,
37 chapter twenty-nine-a of this code, and may appeal a decision of
38 the Circuit Court to the West Virginia Supreme Court of
39 Appeals, in accordance with the provisions of article six, chapter
40 twenty-nine-a of this code.

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

1 (a) There is ~~hereby established~~ continued in the State
2 Treasury a special revenue account, designated as the “Domestic
3 Violence Legal Services Fund,” ~~which~~ that shall be an
4 appropriated fund for receipt of grants, gifts, fees, or federal or
5 state funds designated for legal services for domestic violence
6 victims. Expenditures from the fund shall be limited to attorneys
7 employed or contracted by licensed domestic violence ~~shelters~~
8 programs, or employed or contracted by ~~nonprofit agencies~~ West
9 Virginia’s federally designated legal services program, its
10 successor organization or other nonprofit organization as
11 determined by the department, ~~which~~ that establish a
12 collaborative relationship with a licensed domestic violence

13 ~~shelter program, that to~~ provide civil legal services to victims of
14 domestic violence.

15 (b) Any court of this state may order a nonprevailing party
16 to pay an amount equivalent to the reasonable attorney's fee to
17 which the prevailing litigant would be entitled into the Domestic
18 Violence Legal Services Fund, established in subsection (a) of
19 this section, if the following circumstances occur:

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

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

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

1 ~~A shelter or program receiving funds pursuant to this article~~
2 ~~shall file an annual report with the board by the thirty-first day~~
3 ~~of each October for the prior fiscal year. The report shall include~~
4 ~~statistics on the number of persons served, the relationship of the~~
5 ~~victim to the abuser, services provided to the abuser, the number~~
6 ~~of referrals made for medical, psychological, financial,~~
7 ~~educational, vocational, child care or legal services and the~~
8 ~~results of an independent audit. No information contained in the~~

9 ~~report may identify any person served by the shelter or enable~~
10 ~~any person to determine the identity of any such person.~~

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

13 (b) No information contained in a report may identify any
14 person served by the program or enable any person to determine
15 the identity of any such person.

PART 7. CONFIDENTIALITY.

§48-26-701. Confidentiality.

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

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

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

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

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

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

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

29 (b) Batterer intervention and prevention program participants
30 shall authorize the release of information by signing the
31 following releases:

32 (1) Allowing the provider to inform the victim or alleged
33 victim and the victim's advocates that the batterer is

34 participating in a batterer intervention and prevention program
35 with the provider and to provide information to the victim or
36 alleged victim and her or his advocates, if necessary, for the
37 victim's or alleged victim's safety;

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

40 (3) Allowing the provider, for good cause, to provide
41 information about the batterer to relevant legal entities, including
42 courts, parole officers, probation officers, child protective
43 services, adult protective services, law enforcement, licensed
44 domestic violence programs, or other referral agencies;

45 (4) Allowing the provider to report to the court, if the
46 participation was court ordered, and to the victim or alleged
47 victim, if she or he requests and provides a method of
48 notification and to his or her advocate, any assault, failure to
49 comply with program requirements, failure to attend the
50 program, threat of harm by the batterer, reason for termination
51 and recommendations for changes in the court order; and

52 (5) Allowing the provider to report to the victim or alleged
53 victim, or his or her advocate, without the participant's

54 authorization, all perceived threats of harm, the participant's
 55 failure to attend and reason for termination.

56 (c) Monitored parenting and exchange programs may
 57 disclose to one parent or guardian, without the permission of the
 58 other parent or guardian, any perceived threat of harm or
 59 violation of the court order or violation of the monitored
 60 parenting and exchange program rules by the other parent or
 61 guardian.

62 (d) No monitored parenting and exchange program may
 63 release information about the child without consent of the
 64 custodial parent or guardian.

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

68 ~~(b)~~ (f) No consent or authorization for the transmission or
 69 disclosure of confidential information shall be effective unless
 70 it is in writing and signed by the client program participant
 71 whose information is being disclosed. Every person signing an
 72 authorization shall be given a copy.

73 (g) In no circumstances may a victim of domestic violence,
 74 dating violence, sexual assault, or stalking be required to provide

75 a consent to release his or her personally identifying information
76 as a condition of eligibility for the services, nor may any
77 personally-identifying information be shared in order to comply
78 with federal or state reporting, evaluation, or data collection
79 requirements: *Provided, That:* Nothing in this section prohibits
80 a program from reporting suspected abuse or neglect, as defined
81 by law and where specifically mandated by the state.

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

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

1 ~~The Legislature finds that increasing numbers of children are~~
2 ~~living with one parent and that many of these children have been~~
3 ~~exposed to violence in the home. The Legislature further finds~~
4 ~~that it is sometimes in the best interests of children that the~~
5 ~~exercise of custodial responsibility, including the exchange of~~
6 ~~children, be monitored in order to observe and record the~~
7 ~~exercise of custodial responsibility and to discourage or prevent~~
8 ~~inappropriate conduct. For these reasons, the Legislature~~
9 ~~declares that a program be implemented to foster safe and~~

10 ~~neutral centers to monitor custodial responsibility, including the~~
11 ~~exchange of children, through the certification of children's~~
12 ~~centers for the monitoring of custodial responsibility.~~

13 (a) Judges and magistrates may order persons to apply to a
14 licensed monitored parenting and exchange program for
15 monitored parenting or monitored exchange of children:
16 *Provided*, That a licensed monitored parenting and exchange
17 program may not be required to perform duties that are beyond
18 the program's capacity or scope of services.

19 (b) Judges and magistrates may require a person to pay a
20 reasonable amount based on ability to pay and other relevant
21 criteria for any fee charged by a monitored parenting and
22 exchange program.

23 (c) Licensed monitored parenting and exchange programs
24 may receive referrals from judges, magistrates, child protective
25 services, attorneys and other agencies, for services under the
26 terms and conditions of those services as set forth in rules
27 promulgated by the board.

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

§48-26-1002. Exclusions.

1 The provisions of this part do not apply to therapeutic or
2 supervised visitation or exchanges or any activity conducted by
3 the state or others in abuse and neglect proceedings pursuant to
4 articles six and six-a, chapter forty-nine of this code in which
5 assessment, evaluation, formulation of a treatment plan, case
6 management, counseling, therapy or similar activities occur.

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

1 Every center program shall require that the ~~parents~~ parent,
2 guardian or other ~~caretakers~~ adult sign a written contract prior to
3 using the center program and that the use of the services
4 provided by the center program can be terminated by the center
5 program for violation of the contract.