

H. B. 4446

(By Delegates Perdue, Fleischauer, Campbell,
Ellington, Guthrie, Moye and Staggers)

[Introduced February 7, 2014; referred to the
Committee on Health and Human Resources then the
Judiciary.]

A BILL to amend and reenact chapter forty-nine of the Code of West
Virginia, 1931, as amended, all relating to revising,
arranging, consolidating and recodifying the laws of the State
of West Virginia relating to child welfare.

Be it enacted by the Legislature of West Virginia:

That chapter forty-nine of the Code of West Virginia, 1931, as
amended, be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

PART 1. GENERAL PROVISIONS AND PURPOSE.

§49-1-101. Short title; intent of remedification.

(a) This chapter sets forth the "West Virginia Child Welfare
Act."

(b) The remedification of this chapter during the regular
session of the Legislature in the year 2014 is intended to embrace

1 in a revised, consolidated, and codified form and arrangement the
2 laws of the State of West Virginia relating to child welfare at the
3 time of that enactment.

4 **§49-1-102. Legislative intent; continuation of existing statutory**
5 **provisions.**

6 In recodifying the child welfare law of this state during the
7 regular session of the Legislature in the year 2014 it is intended
8 by the Legislature that each specific reenactment of a
9 substantively similar prior statutory provision will be construed
10 as continuing the intended meaning of the corresponding prior
11 statutory provision and any existing judicial interpretation of the
12 prior statutory provision. It is not the intent of the
13 Legislature, by recodifying the child welfare law of this state
14 during the regular session of the Legislature in the year 2014 to
15 alter the substantive law of this state as it relates to child
16 welfare.

17 **§49-1-103. Operative date of enactment; effect on existing law.**

18 The amendment and reenactment of chapter forty-nine of this
19 code, as enacted by the Legislature during the regular session,
20 2014, are operative on September 1, 2014. The prior enactments of
21 chapters forty-nine of this code, whether amended and reenacted or
22 repealed by the action of the Legislature during the 2014 regular
23 session have full force and effect until that time.

1 **§49-1-104. West Virginia code replacement.**

2 The Department of Health and Human Resources and the
3 Department of Military Affairs and Public Safety are not required
4 to change any form or letter that contains a citation to this code
5 that is changed or otherwise affected by the remodification of this
6 chapter during the regular session of the Legislature in the year
7 2014 unless specifically required by a provision of this code.

8 **§49-1-105. Purpose.**

9 (a) It is the purpose of this chapter to provide a system of
10 coordinated child welfare and juvenile justice services for the
11 children of this state. The state has a duty to assure that proper
12 and appropriate care is given and maintained.

13 (b) The child welfare and juvenile justice system shall:

14 (1) Assure each child care, safety and guidance;

15 (2) Serve the mental and physical welfare of the child;

16 (3) Preserve and strengthen the child family ties;

17 (4) Recognize the fundamental rights of children and parents;

18 (5) Develop and establish procedures and programs which are

19 family-focused rather than focused on specific family members,

20 except where the best interests of the child or the safety of the

21 community are at risk;

22 (6) Involve the child, the child's family or the child's

23 caregiver in the planning and delivery of programs and services;

1 (7) Provide community-based services in the least restrictive
2 settings that are consistent with the needs and potentials of the
3 child and his or her family;

4 (8) Provide for early identification of the problems of
5 children and their families, and respond appropriately to prevent
6 abuse and neglect or delinquency;

7 (9) Provide for the rehabilitation of status offenders and
8 juvenile delinquents;

9 (10) As necessary, provide for the secure detention of
10 juveniles alleged or adjudicated delinquent;

11 (11) Provide for secure incarceration of children or juveniles
12 adjudicated delinquent and committed to the custody of the director
13 of the Division of Juvenile Services; and

14 (12) Protect the welfare of the general public.

15 (c) It is also the policy of this state to ensure that those
16 persons and entities offering quality child care are not
17 over-encumbered by licensure and registration requirements and that
18 the extent of regulation of child care facilities and child placing
19 agencies be moderately proportionate to the size of the facility.

20 (d) Through licensure, approval, and registration of child
21 care, the state exercises its benevolent police power to protect
22 the user of a service from risks against which he or she would have
23 little or no competence for self protection. Licensure, approval,

1 and registration processes shall, therefore, continually balance
2 the child's rights and need for protection with the interests,
3 rights and responsibility of the service providers.

4 **§49-1-106. Location of child welfare services; state and federal**
5 **cooperation.**

6 (a) The child welfare service of the state shall located
7 within and administered by the Department of Health and Human
8 Resources. The Division of Juvenile Services of the Department of
9 Military Affairs and Public Safety shall administer the secure
10 predispositional juvenile detention and juvenile correctional
11 facilities of the state. Notwithstanding any other provision of
12 this code to the contrary, the administrative authority of the
13 Division of Juvenile Services over any child or juvenile in this
14 state extends only to those detained or committed to a secure
15 detention facility or secure correctional facility operated and
16 maintained by the division by an order of a court of competent
17 jurisdiction during the period of actual detention or confinement
18 in the facility.

19 (b) The Department of Health and Human Resources is designated
20 as the state entity to cooperate with the United States Department
21 of Health and Human Services and United States Department of
22 Justice in extending and improving child welfare services, to
23 comply with federal regulations, and to receive and expend federal

1 funds for these services. The Division of Juvenile Services of the
2 Department of Military Affairs and Public Safety is designated as
3 the state entity to cooperate with the United States Department of
4 Health and Human Services and United States Department of Justice
5 in operating, maintaining and improving juvenile correction
6 facilities and centers for the predispositional detention of
7 children, to comply with federal regulations, and to receive and
8 expend federal funds for these services.

9 (c) The Division of Juvenile Services of the Department of
10 Military Affairs and Public Safety is authorized to operate and
11 maintain centers for juveniles needing detention pending
12 disposition by a court having juvenile jurisdiction or temporary
13 care following that court action.

14 PART 2. DEFINITIONS.

15 §49-1-201. Definitions.

16 As used in this chapter the following words and terms shall
17 mean:

18 (1) "Abandoned" means to be without supervision or shelter for
19 an unreasonable period of time in light of the child's age and the
20 ability to care for himself or herself in circumstances presenting
21 an immediate threat of serious harm to that child;

22 (2) "Abused child" means a child whose health or welfare is
23 being harmed or threatened by:

1 (A) A parent, guardian or custodian who knowingly or
2 intentionally inflicts, attempts to inflict or knowingly allows
3 another person to inflict, physical injury or mental or emotional
4 injury, upon the child or another child in the home. Physical
5 injury may include an injury to the child as a result of excessive
6 corporal punishment;

7 (B) Sexual abuse or sexual exploitation;

8 (C) The sale or attempted sale of a child by a parent,
9 guardian or custodian in violation of section eight hundred three,
10 article twenty-two, chapter forty-eight of this code; or

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

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

17 (4) "Adult" means a person who is at least eighteen years of
18 age.

19 (5) "Approval" means a finding by the Secretary of the
20 Department of Health and Human Resources that a facility operated
21 by the state has met the requirements of legislative rules
22 promulgated for operation of that facility and that a Certificate
23 of Approval or a Certificate of Operation has been issued.

1 (6) "Battered parent" means a parent, guardian or other
2 custodian who has been judicially determined not to have condoned
3 the abuse or neglect and has not been able to stop the abuse or
4 neglect of the child or children due to being the victim of
5 domestic violence as defined by section two hundred two, article
6 twenty-seven, chapter forty-eight of this code which was
7 perpetrated by the same person or persons determined to have abused
8 or neglected the child or children.

9 (7) "Caregiver" means any person who is at least eighteen
10 years of age and:

11 (A) Is related by blood, marriage or adoption to the minor,
12 but who is not the legal custodian or guardian of the minor; or

13 (B) Has resided with the minor continuously during the
14 immediately preceding period of six months or more.

15 (8) "Certification of Approval" or "Certificate of Operation"
16 means a statement issued by the Secretary of the Department of
17 Health and Human Resources that a facility meets all of the
18 necessary requirements for operation.

19 (9) "Certificate of license" means a statement issued by the
20 Secretary of the Department of Health and Human Resources
21 authorizing an individual, corporation, partnership, voluntary
22 association, municipality or county, or any agency thereof, to
23 provide specified services for a limited period of time in

1 accordance with the terms of the certificate.

2 (10) "Certificate of registration" means a statement issued by
3 the Secretary of the Department of Health and Human Resources to a
4 family child care home, informal family child care home or relative
5 family child care home, upon receipt of a self-certification
6 statement of compliance with the legislative rules promulgated
7 pursuant to this chapter.

8 (11) "Child" or "Juvenile" means any person under eighteen
9 years of age. Once a child or juvenile is transferred to a court
10 with criminal jurisdiction pursuant to section one hundred nine of
11 article eight of this chapter, he or she shall remain a child or
12 juvenile for the purposes of the applicability of this chapter.
13 Unless otherwise stated, sections one hundred one through section
14 one hundred twenty one of this chapter are excepted. For the
15 purpose of residential services "child" means any person under
16 eighteen years of age or is a transitioning adult. For the purpose
17 of child care services "child" means an individual who meets one of
18 the following conditions:

19 (A) Is under thirteen years of age;

20 (B) Is thirteen to eighteen years of age and under court
21 supervision; or

22 (C) Is thirteen to eighteen years of age and presenting a
23 significant delay of at least twenty-five percent in one or more

1 areas of development, or a six month delay in two or more areas as
2 determined by an early intervention program, special education
3 program or other multidisciplinary team.

4 (12) "Child abuse and neglect" or "child abuse or neglect"
5 means physical injury, mental or emotional injury, sexual abuse,
6 sexual exploitation, sale or attempted sale or negligent treatment
7 or maltreatment of a child by a parent, guardian or custodian who
8 is responsible for the child welfare which harm or threaten the
9 health and welfare of the child.

10 (13) "Child abuse and neglect services" means social services
11 which are directed toward:

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

14 (B) Identifying, preventing and remedying conditions which
15 cause child abuse and neglect;

16 (C) Preventing the unnecessary removal of children from their
17 families by identifying family problems and assisting families in
18 resolving problems which could lead to a removal of children and a
19 breakup of the family;

20 (D) In cases where children have been removed from their
21 families, providing services to the children and the families so as
22 to reunify those children with their families or some portion
23 thereof;

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

4 (F) Assuring the adequate care of children or juveniles who
5 have been placed in the custody of the department or third parties.

6 (14) "Child advocacy center (CAC)" means a community-based
7 organization that is a member in good standing with the West
8 Virginia Child Abuse Network, Inc as set forth in section one
9 hundred one, article five of this chapter.

10 (15) "Child care" means responsibilities assumed and services
11 performed in relation to a child's physical, emotional,
12 psychological, social and personal needs and the consideration of
13 the child's rights and entitlements, but does not include secure
14 detention or incarceration under the jurisdiction of the Division
15 of Juvenile Services pursuant to article eight of this chapter. It
16 includes the provision of child care services or residential
17 services.

18 (16) "Child care center" means a facility maintained by the
19 state or any county or municipality thereof, or any agency or
20 facility maintained by an individual, firm, corporation,
21 association or organization, public or private for the care of
22 thirteen or more children for child care services in any setting,
23 if the facility is open for more than thirty days per year per

1 child.

2 (17) "Child care services" means direct care and protection of
3 children during a portion of a twenty-four hour day outside of the
4 child's own home which provides experiences to children that foster
5 their healthy development and education.

6 (18) "Child placing agency" means a child welfare agency
7 organized for the purpose of placing children in private family
8 homes for foster care or for adoption. The function of a
9 child-placing agency may include the investigation and
10 certification of foster family homes and foster family group homes
11 as provided in this chapter. The function of a child placing
12 agency may also include the supervision of children who are sixteen
13 or seventeen years old and living in unlicensed residences.

14 (19) "Child welfare agency" means any agency or facility
15 maintained by the state or any county or municipality thereof, or
16 any agency or facility maintained by an individual, firm,
17 corporation, association or organization, public or private, to
18 receive children for care and maintenance or for placement in
19 residential care facilities, including, without limitation, private
20 homes, or any facility that provides care for unmarried mothers and
21 their children. A child welfare agency does not include juvenile
22 detention facilities or juvenile correctional facilities operated
23 by or under contract with the Division of Juvenile Services,

1 created pursuant to article eight of this chapter, nor any other
2 facility operated by that division for the secure housing or
3 holding of juveniles committed to its custody.

4 (20) "Community based", means a facility, program or service
5 located near the child's home or family and involving community
6 participation in planning, operation and evaluation and which may
7 include, but is not limited to, medical, educational, vocational,
8 social and psychological guidance, training, special education,
9 counseling, alcoholism and any treatment and other rehabilitation
10 services.

11 (21) "Condition requiring emergency medical treatment" means
12 a condition which, if left untreated for a period of a few hours,
13 may result in permanent physical damage; such a condition includes,
14 but is not limited to, profuse or arterial bleeding, dislocation or
15 fracture, unconsciousness and evidence of ingestion of significant
16 amounts of a poisonous substance.

17 (22) "Court" means the circuit court of the county with
18 jurisdiction of the case or the judge in vacation unless otherwise
19 specifically provided.

20 (23) "Court appointed special advocate (CASA) program" means
21 a community organization that screens, trains and supervises CASA
22 volunteers to advocate for the best interests of children who are
23 involved in abuse and neglect proceedings section one hundred two,

1 article five of this chapter.

2 (24) "Custodian" means a person who has or shares actual
3 physical possession or care and custody of a child, regardless of
4 whether that person has been granted custody of the child by any
5 contract, agreement or legal proceedings.

6 (25) "Department" or "state department" means the West
7 Virginia Department of Health and Human Resources.

8 (26) "Developmental disability" means a severe, chronic
9 disability of a person which:

10 (A) Is attributable to a mental or physical impairment or a
11 combination of mental and physical impairments;

12 (B) Is manifested before the person attains age twenty-two;

13 (C) Results in substantial functional limitations in three or
14 more of the following areas of major life activity:

15 (i) Self-care;

16 (ii) Receptive and expressive language;

17 (iii) Learning;

18 (iv) Mobility;

19 (v) Self-direction;

20 (vi) Capacity for independent living; and

21 (vii) Economic self-sufficiency; and

22 (D) Reflects the person's need for services and supports which
23 are of lifelong or extended duration and are individually planned

1 and coordinated.

2 (E) The term "developmental disability", when applied to
3 infants and young children, means individuals from birth to age
4 five, inclusive, who have substantial developmental delays or
5 specific congenital or acquired conditions with a high probability
6 of resulting in developmental disabilities if services are not
7 provided.

8 (27) "Division of Juvenile Services" means the division within
9 the West Virginia Department of Military Affairs and Public Safety.

10 (28) "Extrajudicial Statement" means any utterance, written or
11 oral, which was made outside of court.

12 (29) "Facility" means a place or residence, including
13 personnel, structures, grounds and equipment, used for the care of
14 a child or children on a residential or other basis for any number
15 of hours a day in any shelter or structure maintained for that
16 purpose. Facility does not include any juvenile detention facility
17 or juvenile correctional facility operated by or under contract
18 with the Division of Juvenile Services, for the secure housing or
19 holding of juveniles committed to its custody.

20 (30) "Family or primary caregiver" means the person or persons
21 with whom the developmentally disabled person resides and who is
22 primarily responsible for the physical care, education, health and
23 nurturing of the disabled person. The term does not include

1 hospitals, sanitariums, nursing homes, personal care homes or any
2 other similar institution.

3 (31) "Family child care home" means a facility which is used
4 to provide nonresidential child care services for compensation in
5 a provider's residence. The provider may care for four to six
6 children, at one time including children who are living in the
7 household, who are under six years of age. No more than two of the
8 total number of children may be under twenty-four months of age.

9 (32) "Family child care facility" means any facility which is
10 used to provide nonresidential child care services for compensation
11 for seven to twelve children, including children who are living in
12 the household, who are under six years of age. No more than four
13 of the total number of children may be under twenty-four months of
14 age. A facility may be in a provider's residence or a separate
15 building.

16 (33) "Family resource network" means:

17 (A) A local community organization charged with service
18 coordination, needs and resource assessment, planning, community
19 mobilization and evaluation, and which has met the following
20 criteria:

21 (i) Agreeing to a single governing entity;

22 (ii) Agreeing to engage in activities to improve service
23 systems for children and families within the community;

1 (iii) Addressing a geographic area of a county or two or more
2 contiguous counties;

3 (iv) Having nonproviders, which include family representatives
4 and other members who are not employees of publicly funded
5 agencies, as the majority of the members of the governing body, and
6 having family representatives as the majority of the nonproviders;

7 (v) Having representatives of local service agencies,
8 including, but not limited to, the public health department, the
9 behavioral health center, the local health and human resources
10 agency and the county school district, on the governing body; and

11 (vi) Accepting principles consistent with the cabinet's
12 mission as part of its philosophy.

13 (B) A family resource network may not provide direct services,
14 which means to provide programs or services directly to children
15 and families.

16 (34) "Family support" means goods and services needed by
17 families to care for their family members with developmental
18 disabilities and to enjoy a quality of life comparable to other
19 community members.

20 (35) "Family support program" means a coordinated system of
21 family support services administered by the Department of Health
22 and Human Resources through contracts with behavioral health
23 agencies throughout the state.

1 (36) "Foster family home" means a private residence which is
2 used for the care on a residential basis of no more than five
3 children who are unrelated by blood, marriage or adoption to any
4 adult member of the household.

5 (37) "Guardian" means a person who has care and custody of a
6 child or juvenile as a result of any contract, agreement or legal
7 proceeding.

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

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

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

20 (C) Nutritional deprivation;

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

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

23 (F) Substantial emotional injury inflicted by a parent,

1 guardian or custodian;

2 (G) Sale or attempted sale of the child by the parent,
3 guardian or custodian; or

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

9 (39) "Health care and treatment" means:

10 (A) Developmental screening;

11 (B) Mental health screening;

12 (C) Mental health treatment;

13 (D) Ordinary and necessary medical and dental examination and
14 treatment;

15 (E) Preventive care including ordinary immunizations,
16 tuberculin testing and well-child care; and

17 (F) Nonemergency diagnosis and treatment: *Provided, That*
18 nonemergency diagnosis and treatment does not include an abortion.

19 (40) "Informal family child care" means a home that is used to
20 provide nonresidential child care services for compensation for
21 three or fewer children, including children who are living in the
22 household, who are under six years of age. Care is given in the
23 provider's own home to at least one child who is not related to the

1 caregiver.

2 (41) "Juvenile delinquent" means a juvenile who has been
3 adjudicated as one who commits an act which would be a crime under
4 state law or a municipal ordinance if committed by an adult.

5 (42) "Law-enforcement officer" means a law-enforcement officer
6 of the Department of Public Safety, a municipality or county
7 sheriff's department.

8 (43) "Legal guardian" means the person who is appointed legal
9 guardian of a developmentally disabled person and who is
10 responsible for the physical and financial aspects of caring for
11 that person, regardless of whether the disabled person resides with
12 his or her legal guardian or another family member.

13 (44) "Legal guardianship" means the permanent relationship
14 between a child and a caretaker, established by order of the
15 circuit court having jurisdiction over the child or juvenile,
16 pursuant to this chapter and chapter forty-eight of this code.

17 (45) "License" means the grant of official permission to a
18 facility to engage in an activity which would otherwise be
19 prohibited.

20 (46) "Multidisciplinary team" means a group of professionals
21 and paraprofessionals representing a variety of disciplines who
22 interact and coordinate their efforts to identify, diagnose and
23 treat specific cases of child abuse and neglect. Multidisciplinary

1 teams may include, but are not limited to, medical, educational,
2 child care and law-enforcement personnel, social workers,
3 psychologists and psychiatrists. Their goal is to pool their
4 respective skills in order to formulate accurate diagnoses and to
5 provide comprehensive coordinated treatment with continuity and
6 followup for both parents and children. "Community team" means a
7 multidisciplinary group which addresses the general problem of
8 child abuse and neglect in a given community and may consist of
9 several multidisciplinary teams with different functions.

10 (47) "Neglected child" means a child:

11 (A) (i) Whose physical or mental health is harmed or
12 threatened by a present refusal, failure or inability of the
13 child's parent, guardian or custodian to supply the child with
14 necessary food, clothing, shelter, supervision, medical care or
15 education, when that refusal, failure or inability is not due
16 primarily to a lack of financial means on the part of the parent,
17 guardian or custodian; or

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

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

1 (48) "Nonsecure facility" means any public or private
2 residential facility not characterized by construction fixtures
3 designed to physically restrict the movements and activities of
4 individuals held in lawful custody in that facility and which
5 provides its residents access to the surrounding community with
6 supervision.

7 (49) "Out of school time" means a child care service which
8 offers activities to children before and after school, on school
9 holidays, when school is closed due to emergencies, and on school
10 calendar days set aside for teacher activities.

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

15 (51) "Parental rights" means any and all rights and duties
16 regarding a parent to a minor child. This shall include, at a
17 minimum, custodial rights and visitational rights and rights to
18 participate in the decisions affecting a minor child.

19 (52) "Parenting skills" means a parent's competency in
20 providing physical care, protection, supervision and psychological
21 support appropriate to a child's age and state of development.

22 (53) "Placement" means any temporary or permanent placement of
23 a child who is in the custody of the state in any foster home,

1 group home or other facility or residence.

2 (54) "Regional family support council" means the council
3 established by the regional family support agency under article
4 eight of this chapter to carry out the responsibilities specified
5 in this article.

6 (55) "Registration" means the process by which a family child
7 care home, informal family child care home or a relative family
8 child care home self-certifies compliance with the legislative
9 rules promulgated pursuant to this chapter.

10 (56) "Relative family child care" means a home that provides
11 nonresidential child care services only to children related to the
12 caregiver. The caregiver is a grandparent, great grandparent,
13 aunt, uncle, great-aunt, great-uncle or adult sibling of the child
14 or children receiving care. Care is given in the provider's home.

15 (57) "Res gestae" means a spontaneous declaration made by a
16 person immediately after an event and before the person has had an
17 opportunity to conjure a falsehood.

18 (58) "Residential services" means child care which includes
19 the provision of nighttime shelter and the personal discipline and
20 supervision of a child by guardians, custodians or other persons or
21 entities on a continuing or temporary basis. It may include care
22 and or treatment for transitioning adults. Residential Services
23 does not include or apply to any juvenile detention facility or

1 juvenile correctional facility operated by the Division of Juvenile
2 Services, created pursuant to this chapter, for the secure housing
3 or holding of juveniles committed to its custody.

4 (59) "Rule" means legislative rules promulgated by the
5 Secretary of the Department of Health and Human Resources or a
6 statement issued by the Secretary of the Department of Health and
7 Human Resources of the standards to be applied in the various areas
8 of child care.

9 (60) "Secretary" means the Secretary of the West Virginia
10 Health and Human Resources.

11 (61) "Secure facility" means any public or private residential
12 facility which includes construction fixtures designed to
13 physically restrict the movements and activities of children or
14 other individuals held in lawful custody in that facility.

15 (62) "Sexual abuse" means:

16 (A) Sexual intercourse, sexual intrusion or sexual contact
17 which a parent, guardian or custodian engages in, attempts to
18 engage in, or knowingly procures another person to engage in with
19 a child notwithstanding the fact that for a child who is less than
20 sixteen years of age the child may have willingly participated in
21 such conduct or the child may have suffered no apparent physical
22 injury or mental or emotional injury as a result of that conduct
23 or, for a child sixteen years of age or older the child may have

1 consented to that conduct or the child may have suffered no
2 apparent physical injury or mental or emotional injury as a result
3 of that conduct.

4 (B) Any conduct where a parent, guardian or custodian displays
5 his or her sex organs to a child, or procures another person to
6 display his or her sex organs to a child, for the purpose of
7 gratifying the sexual desire of the parent, guardian or custodian,
8 of the person making that display, or of the child, or for the
9 purpose of affronting or alarming the child.

10 (63) "Sexual contact" means sexual contact as that term is
11 defined in section one, article eight-b, chapter sixty-one of this
12 code.

13 (64) "Sexual exploitation" means an act where:

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

18 (B) A parent, guardian or custodian persuades, induces,
19 entices or coerces a child to display his or her sex organs for the
20 sexual gratification of the parent, guardian, custodian or a third
21 person, or to display his or her sex organs under circumstances in
22 which the parent, guardian or custodian knows that such display is
23 likely to be observed by others who would be affronted or alarmed.

1 (65) "Sexual intercourse" means sexual intercourse as that
2 term is defined in section one, article eight-b, chapter sixty-one
3 of this code.

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

7 (67) "Serious physical abuse" means bodily injury which
8 creates a substantial risk of death, which causes serious or
9 prolonged disfigurement, prolonged impairment of health or
10 prolonged loss or impairment of the function of any bodily organ.

11 (68) "Siblings" means children who have at least one
12 biological parent in common or who have been legally adopted by the
13 same parent or parents.

14 (69) "Staff-secure facility" means any public or private
15 residential facility characterized by staff restrictions of the
16 movements and activities of individuals held in lawful custody in
17 that facility and which limits its residents' access to the
18 surrounding community, but is not characterized by construction
19 fixtures designed to physically restrict the movements and
20 activities of residents.

21 (70) "State family support council" means the council
22 established by the Department of Health and Human Resources
23 pursuant to article eight of this chapter to carry out the

1 responsibilities specified in article five of this chapter.

2 (71) "Status offender" means a juvenile who has been
3 adjudicated as one:

4 (A) Who habitually and continually refuses to respond to the
5 lawful supervision by his or her parents, guardian or legal
6 custodian such that the juvenile's behavior substantially endangers
7 the health, safety or welfare of the juvenile or any other person;

8 (B) Who has left the care of his or her parents, guardian or
9 custodian without the consent of that person or without good cause;
10 or

11 (C) Who is habitually absent from school without good cause.

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

23 (73) "Transitioning adult" means an individual with a transfer

1 plan to move to an adult setting who meets one of the following
2 conditions:

3 (A) Is eighteen years of age but under twenty-one years of
4 age, was in the custody of the Department of Health and Human
5 Resources upon reaching eighteen years of age and committed an act
6 of delinquency before reaching eighteen years of age, remains under
7 the jurisdiction of the juvenile court, and requires supervision
8 and care to complete an education and or treatment program which
9 was initiated prior to the eighteenth birthday.

10 (B) Is eighteen years of age but under twenty-one years of
11 age, was adjudicated abused, neglected, or in the custody of the
12 Department of Health and Human Resources upon reaching eighteen
13 years of age and enters into a contract with the Department of
14 Health and Human Resources to continue in an educational, training,
15 or treatment program which was initiated prior to the eighteenth
16 birthday.

17 (74) "Valid court order" means an order issued by a court of
18 competent jurisdiction relating to a child brought before the court
19 and who is the subject of that order. Prior to the entry of the
20 order the child shall have received the full due process rights
21 guaranteed to that child or juvenile by the Constitutions of the
22 United States and the State of West Virginia.

23 (75) "Variance" means a declaration that a rule may be

1 accomplished in a manner different from the manner set forth in the
2 rule.

3 (76) "Violation of a traffic law of West Virginia" means a
4 violation of chapter seventeen-a, seventeen-b, seventeen-c or
5 seventeen-d of this code except a violation of section one or two,
6 article four, chapter seventeen-c of this code relating to hit and
7 run or section one, two or three, article five of that chapter,
8 relating, respectively, to negligent homicide, driving under the
9 influence of alcohol, controlled substances or drugs and reckless
10 driving.

11 (77) "Waiver" means a declaration that a certain legislative
12 rule is inapplicable in a particular circumstance.

13 **ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.**

14 **PART 1. GENERAL PROVISIONS.**

15 **§49-2-101. Authorization and Responsibility.**

16 (a) The Department of Health and Human Resources is
17 authorized to provide care, support and protective services for
18 children who are handicapped by dependency, neglect, single parent
19 status, mental or physical disability, or who for other reasons are
20 in need of public service. The department is also authorized to
21 accept children for care from their parent or parents, guardian,
22 custodian or relatives and to accept the custody of children
23 committed to its care by courts. The Department of Health and

1 Human Resources or any county office of the department is also
2 authorized and to accept temporary custody of children for care
3 from any law-enforcement officer in an emergency situation.

4 (b) The Department of Health and Human Resources is
5 responsible for the care of the infant child of an unmarried mother
6 who has been committed to the custody of the department while the
7 infant is placed in the same licensed child welfare agency as his
8 or her mother. The department may provide care for those children
9 in family homes meeting required standards, at board or otherwise,
10 through a licensed child welfare agency, or in a state institution
11 providing care for dependent or neglected children. If practical,
12 when placing any child in the care of a family or a child welfare
13 agency the department shall select a family holding the same
14 religious belief as the parents or relatives of the child or a
15 child welfare agency conducted under religious auspices of the same
16 belief as the parents or relatives.

17 PART 2. FOSTER CARE.

18 **§49-2-201. Department Responsibility for Foster Care Homes.**

19 (a) It is the responsibility of the Department of Health and
20 Human Resources to provide care for neglected children who are
21 committed to its care for custody or guardianship. The department
22 may provide this care for children in family homes meeting required
23 standards of certification established and enforced by the

1 Department of Health and Human Resources.

2 (b) For the sole purpose of increasing the number of full time
3 front line child protective service case workers and investigators,
4 the Secretary of the Department of Health and Human Resources shall
5 have the authority to transfer funds between all general revenue
6 accounts under the secretary's authority and/or between personnel
7 and nonpersonnel lines within each account under the secretary's
8 authority. Nothing in this section shall be construed to require
9 the department to hire additional child protective service workers
10 at any time if the department determines that funds are not
11 available for those workers.

12 **§49-2-202. Unsupervised foster homes.**

13 (1) An unsupervised foster home is:

14 (A) Any family home not under the supervision of the
15 department or of a child welfare agency, and

16 (B) Which houses one or more neglected children under the care
17 of the department and who are:

18 (i) Under eighteen years of age;

19 (ii) Separated from parents or guardian;

20 (iii) Are not related by blood or marriage to the person
21 maintaining the home; and

22 (iv) Are received, cared for and maintained for compensation,
23 or otherwise.

1 (2) No person shall operate an unsupervised foster home
2 without a certificate from the department.

3 **§49-2-203. Certificate of operation; inspection.**

4 (a) The department shall establish minimum standards for
5 foster-home care to which all certified foster homes must conform
6 by legislative rule. Any home that conforms to the standards of
7 care set by the department shall receive a certificate of
8 operation.

9 (b) The certificate of operation shall be in force for one
10 year from the date of issuance and may be renewed unless revoked
11 because of willful violation of this chapter.

12 (c) The certificate shall show the name of the person or
13 persons authorized to conduct the home, its exact location and the
14 number of children that may be received and cared for at one time
15 and other information as set forth in legislative rule. No
16 certified foster home shall provide care for more children than are
17 specified in the certificate.

18 (d) No unsupervised foster home shall be certified until an
19 investigation of the home and its standards of care has been made
20 by the department or by a licensed child welfare agency serving as
21 a representative of the department.

22 **§49-2-204. Visits and inspections; records.**

23 The department or its authorized agent shall visit and inspect

1 every certified foster home as often as is necessary to assure
2 proper care is given to the children. Every certified foster home
3 shall maintain a record of the children received. This record
4 shall include information as prescribed by the department in
5 legislative rule and shall be in a form and manner as prescribed by
6 the department in legislative rule.

7 **§49-2-205. Removal of child from undesirable foster home.**

8 If the department finds a child in an unsupervised foster home
9 is subject to undesirable influences or lacks proper or wise care
10 and management, it shall take necessary action to remove the child
11 and arrange for his or her care in another suitable location.

12 **§49-2-206. Criteria and procedure for removal of child from**
13 **foster home; notice of child's availability for**
14 **placement; limitations.**

15 (a) The department may temporarily remove a child from a
16 foster home based on an allegation of abuse or neglect, including
17 sexual abuse, that occurred while the child resided in the home.
18 If the department determines that reasonable cause exists to
19 support the allegation, the department shall remove all foster
20 children from the arrangement and preclude contact between the
21 children and the foster parents. If, after investigation, the
22 allegation is determined to be true by the department or after a
23 judicial proceeding a court finds the allegation to be true or if

1 the foster parents fail to contest the allegation in writing within
2 twenty calendar days of receiving written notice of said
3 allegations, the department shall permanently terminate all foster
4 care arrangements with said foster parents. If the department
5 determines that the abuse occurred due to no act or failure to act
6 on the part of the foster parents and that continuation of the
7 foster care arrangement is in the best interests of the child, the
8 department may, in its discretion, elect not to terminate the
9 foster care arrangement or arrangements.

10 (b) When a child has been placed in a foster care arrangement
11 for a period in excess of eighteen consecutive months and the
12 department determines that the placement is a fit and proper place
13 for the child to reside, the foster care arrangement may not be
14 terminated unless such termination is in the best interest of the
15 child and:

16 (1) The foster care arrangement is terminated pursuant to
17 subsection (a) of this section;

18 (2) The foster care arrangement is terminated due to the child
19 being returned to his or her parent or parents;

20 (3) The foster care arrangement is terminated due to the child
21 being united or reunited with a sibling or siblings;

22 (4) The foster parent or parents agree to the termination in
23 writing;

1 (5) The foster care arrangement is terminated at the written
2 request of a foster child who has attained the age of fourteen; or

3 (6) A circuit court orders the termination upon a finding that
4 the department has developed a more suitable long-term placement
5 for the child upon hearing evidence in a proceeding brought by the
6 department seeking removal and transfer.

7 (c) When a child has been residing in a foster home for a
8 period in excess of six consecutive months in total and for a
9 period in excess of thirty days after the parental rights of the
10 child's biological parents have been terminated and the foster
11 parents have not made an application to the department to establish
12 an intent to adopt the child within thirty days of parental rights
13 being terminated, the department may terminate the foster care
14 arrangement if another, more beneficial, long-term placement of the
15 child is developed. If the child is twelve years of age or older,
16 the child shall be provided the option of remaining in the existing
17 foster care arrangement if the child so desires and if continuation
18 of the existing arrangement is in the best interest of the child.

19 (d)(1) When a child is placed into foster care or becomes
20 eligible for adoption and a sibling or siblings have previously
21 been placed in foster care or have been adopted, the department
22 shall notify the foster parents or adoptive parents of the
23 previously placed or adopted sibling or siblings of the child's

1 availability for foster care placement or adoption to determine if
2 the foster parents or adoptive parents are desirous of seeking a
3 foster care arrangement or adoption of the child.

4 (2) Where a sibling or siblings have previously been adopted,
5 the department shall also notify the adoptive parents of a sibling
6 of the child's availability for foster care placement in that home
7 and a foster care arrangement entered into to place the child in
8 the home if the adoptive parents of the sibling are otherwise
9 qualified or can become qualified to enter into a foster care
10 arrangement with the department and if such arrangement is in the
11 best interests of the child.

12 (3) The department may petition the court to waive
13 notification to the foster parents or adoptive parents of the
14 child's siblings. This waiver may be granted, ex parte, upon a
15 showing of compelling circumstances.

16 (e) (1) When a child is in a foster care arrangement and is
17 residing separately from a sibling or siblings who are in another
18 foster home or who have been adopted by another family and the
19 parents with whom the placed or adopted sibling or siblings reside
20 have made application to the department to establish an intent to
21 adopt or to enter into a foster care arrangement regarding a child
22 so that said child may be united or reunited with a sibling or
23 siblings, the department shall upon a determination of the fitness

1 of the persons and household seeking to enter into a foster care
2 arrangement or seek an adoption which would unite or reunite
3 siblings, and if termination and new placement are in the best
4 interests of the children, terminate the foster care arrangement
5 and place the child in the household with the sibling or siblings.

6 (2) If the department is of the opinion based upon available
7 evidence that residing in the same home would have a harmful
8 physical, mental or psychological effect on one or more of the
9 sibling children or if the child has a physical or mental
10 disability which the existing foster home can better accommodate,
11 or if the department can document that the reunification of the
12 siblings would not be in the best interest of one or all of the
13 children, the department may petition the circuit court for an
14 order allowing the separation of the siblings to continue.

15 (3) If the child is twelve years of age or older, the
16 department shall provide the child the option of remaining in the
17 existing foster care arrangement if remaining is in the best
18 interests of the child. In any proceeding brought by the
19 department to maintain separation of siblings, such separation may
20 be ordered only if the court determines that clear and convincing
21 evidence supports the department's determination.

22 (4) In any proceeding brought by the department seeking to
23 maintain separation of siblings, notice shall be afforded, in

1 addition to any other persons required by any provision of this
2 code to receive notice, to the persons seeking to adopt a sibling
3 or siblings of a previously placed or adopted child and said
4 persons may be parties to any such action.

5 (f) Where two or more siblings have been placed in separate
6 foster care arrangements and the foster parents of the siblings
7 have made application to the department to enter into a foster care
8 arrangement regarding the sibling or siblings not in their home or
9 where two or more adoptive parents seek to adopt a sibling or
10 siblings of a child they have previously adopted, the department's
11 determination as to placing the child in a foster care arrangement
12 or in an adoptive home shall be based solely upon the best
13 interests of the siblings.

14 **§49-2-207. Placing children from other states in private homes of**
15 **state.**

16 An institution or organization incorporated under the laws of
17 another state shall not place a child in a private home in the
18 state without the approval of the department, and the agency so
19 placing the child shall arrange for supervision of the child
20 through its own staff or through a licensed child welfare agency in
21 this state, and shall maintain responsibility for the child until
22 he or she is adopted or discharged from care with the approval of
23 the department.

1 PART 3. CHILD WELFARE AGENCIES.

2 **§49-2-301. Development of standards of child care.**

3 The department shall develop standards for the care of
4 children. It shall cooperate with, advise and assist all child
5 welfare agencies, including state institutions, which care for
6 neglected, delinquent, or mentally or physically handicapped
7 children, and shall supervise all such agencies. The department,
8 in cooperation with child welfare agencies, shall formulate and
9 make available standards of child care and services for children,
10 to which all child welfare agencies must conform.

11 **§49-2-302. Supervision by the department, records and reports.**

12 (a) In order to improve standards of child care, the
13 department shall cooperate with the governing boards of child
14 welfare agencies, assist the staffs of such agencies through advice
15 on progressive methods and procedures of child care and improvement
16 of the service rendered, and assist in the development of community
17 plans of child care. The department, or its duly authorized agent,
18 may visit any child welfare agency to advise the agency on matters
19 affecting the health of children and to inspect the sanitation of
20 the buildings used for their care.

21 (b) Each child welfare agency shall keep records of each child
22 under its control and care as the department may prescribe, and
23 shall report to the department, whenever requested, facts as may be

1 required with reference to such children, upon forms furnished by
2 the department. All records regarding children and all facts
3 learned about children and their parents or relatives shall be
4 regarded as confidential and shall be properly safeguarded by the
5 agency and the department.

6 **§49-2-303. Approval of incorporation by Secretary of State;**
7 **approval of articles of incorporation.**

8 (a) Before issuing a charter for the incorporation of any
9 organization having as its purpose the receipt of children for care
10 or for placement in family homes, the Secretary of State shall
11 provide a copy of the petition, together with any other information
12 in his or her possession pertaining to the proposed corporation, to
13 the secretary, and no charter for any such corporation shall be
14 issued unless the secretary shall first certify to the Secretary of
15 State that it has investigated the need for the services proposed
16 and the merits of the proposed charitable corporation and
17 recommends the issuance thereof; applications for amendments of any
18 existing charter shall be similarly referred and shall be granted
19 only upon similar approval.

20 (b) A child welfare agency may not be incorporated in this
21 state unless the articles of incorporation have first been examined
22 and approved by the secretary, or his or her designee. Proposed
23 amendments to articles of incorporation shall be subject to the

1 examination and approval of the secretary, or his or her designee.

2 **§49-2-304. Licensure, certification, approval and registration**
3 **requirements.**

4 (a) Any person, corporation or child welfare agency, other
5 than a state agency, which operates a residential child care center
6 shall obtain a license from the department.

7 (b) Any residential child care facility, day care center or
8 any child-placing agency operated by the state shall obtain
9 approval of its operations from the secretary.

10 (c) Any family day care facility which operates in this state,
11 including family day care facilities approved by the department for
12 receipt of funding, shall obtain a statement of certification from
13 the department.

14 (d) Every family day care home which operates in this state,
15 including family day care homes approved by the department for
16 receipt of funding, shall obtain a certificate of registration from
17 the department. The facilities and placing agencies shall maintain
18 the same standards of care applicable to licensed facilities,
19 centers or placing agencies of the same category.

20 (e) This section does not apply to:

21 (1) A kindergarten, preschool or school education program
22 which is operated by a public school or which is accredited by the
23 state Department of Education, or any other kindergarten, preschool

1 or school programs which operate with sessions not exceeding four
2 hours per day for any child;

3 (2) An individual or facility which offers occasional care of
4 children for brief periods while parents are shopping, engaging in
5 recreational activities, attending religious services or engaging
6 in other business or personal affairs;

7 (3) Summer recreation camps operated for children attending
8 sessions for periods not exceeding thirty days;

9 (4) Hospitals or other medical facilities which are primarily
10 used for temporary residential care of children for treatment,
11 convalescence or testing;

12 (5) Persons providing family day care solely for children
13 related to them;

14 (6) Any juvenile detention facility or juvenile correctional
15 facility operated by or under contract with the Division of
16 Juvenile Services for the secure housing or holding of juveniles
17 committed to its custody;

18 (7) Any out-of-school time program that has been awarded a
19 grant by the West Virginia Department of Education to provide
20 out-of-school time programs to kindergarten through twelfth grade
21 students when the program is monitored by the West Virginia
22 Department of Education; or

23 (8) Any out-of-school time program serving children six years

1 of age or older and meets all of the following requirements, or is
2 an out-of-school time program that is affiliated and in good
3 standing with a national Congressionally chartered organization and
4 meets all of the following requirements:

5 (A) The program is located in a facility that meets all fire
6 and health codes;

7 (B) The program performs background checks on all volunteers
8 and staff;

9 (C) The program's primary source of funding is not from fees
10 for service; and

11 (D) The program has a formalized monitoring system in place.

12 (f) The secretary is authorized to issue an emergency rule
13 relating to conducting a survey of existing facilities in this
14 state in which children reside on a temporary basis in order to
15 ascertain whether they should be subject to licensing under this
16 article or applicable licensing provisions relating to behavioral
17 health treatment providers.

18 (g) Any informal family child care home or relative family
19 child care home may voluntarily register and obtain a certificate
20 of registration from the department.

21 (h) All facilities or programs that provide out-of-school time
22 care shall register with the department upon commencement of
23 operations and on an annual basis thereafter. The department shall

1 obtain information such as the name of the facility or program, the
2 description of the services provided and any other information
3 relevant to the determination by the department as to whether the
4 facility or program meets the criteria for exemption under this
5 section.

6 (i) Any child care service that is licensed or receives a
7 certificate of registration shall have a written plan for
8 evacuation in the event of fire, natural disaster or other
9 threatening situation that may pose a health or safety hazard to
10 the children in the child care service.

11 (1) The plan shall include, but not be limited to:

12 (A) A designated relocation site and evacuation;

13 (B) Procedures for notifying parents of the relocation and
14 ensuring family reunification;

15 (C) Procedures to address the needs of individual children
16 including children with special needs;

17 (D) Instructions relating to the training of staff or the
18 reassignment of staff duties, as appropriate;

19 (E) Coordination with local emergency management officials;

20 and

21 (F) A program to ensure that appropriate staff are familiar
22 with the components of the plan.

23 (2) A child care service shall update the evacuation plan by

1 December 31 of each year. If a child care service fails to update
2 the plan, no action shall be taken against the child care service's
3 license or registration until notice is provided and the child care
4 service is given thirty days after the receipt of notice to provide
5 an updated plan.

6 (3) A child care service shall retain an updated copy of the
7 plan for evacuation and shall provide notice of the plan and
8 notification that a copy of the plan will be provided upon request
9 to any parent, custodian or guardian of each child at the time of
10 the child's enrollment in the child care service and when the plan
11 is updated.

12 (4) All child care centers and family child care facilities
13 shall provide the plan and each updated copy of the plan to the
14 Director of the Office of Emergency Services in the county where
15 the center or facility is located.

16 **§49-2-305. Application for license or approval.**

17 (a) Any person or corporation or any governmental agency
18 intending to act as a child welfare agency shall apply for a
19 license, approval or registration certificate to operate child care
20 facilities regulated by this chapter. Applications for licensure,
21 approval or registration shall be made separately for each child
22 care facility to be licensed, approved, certified or registered.

23 (b) The secretary shall prescribe by legislative rule forms

1 and reasonable application procedures including, but not limited
2 to, fingerprinting of applicants and other persons responsible for
3 the care of children for submission to the State Police and, if
4 necessary, to the Federal Bureau of Investigation for criminal
5 history record checks.

6 (c) Before issuing a license, or approval, the secretary shall
7 investigate the facility, program and persons responsible for the
8 care of children. The investigation shall include, but not be
9 limited to, review of resource need, reputation, character and
10 purposes of applicants, a check of personnel criminal records, if
11 any, and personnel medical records, the financial records of
12 applicants, review of the facilities emergency evacuation plan and
13 consideration of the proposed plan for child care from intake to
14 discharge.

15 (d) Before a home registration is granted, the secretary shall
16 make inquiry as to the facility, program and persons responsible
17 for the care of children. The inquiry shall include
18 self-certification by the prospective home of compliance with
19 standards including, but not limited to:

20 (1) Physical and mental health of persons present in the home
21 while children are in care;

22 (2) Criminal and child abuse or neglect history of persons
23 present in the home while children are in care;

1 (3) Discipline;

2 (4) Fire and environmental safety;

3 (5) Equipment and program for the children in care; and

4 (6) Health, sanitation and nutrition.

5 (e) Further inquiry and investigation may be made as the
6 secretary may direct and sees as necessary.

7 (f) The secretary shall make a decision on each application
8 within sixty days of its receipt and shall provide to unsuccessful
9 applicants written reasons for the decision.

10 **§49-2-306. Conditions of licensure, approval and registration.**

11 (a) A license or approval is effective for a period up to two
12 years from the date of issuance, unless revoked or modified to
13 provisional status based on evidence of a failure to comply with
14 this chapter or any legislative rules promulgated by the secretary.
15 The license or approval shall be reinstated upon application to the
16 secretary and a determination of compliance.

17 (b) An initial six-month license or approval shall be issued
18 to an applicant establishing a new service found to be in
19 compliance on initial review with regard to policy, procedure,
20 organization, risk management, human resources, service environment
21 and record keeping regulations.

22 (c) A provisional license or approval may be issued when a
23 licensee is not in compliance with the legislative rules

1 promulgated by the secretary but does not pose a significant risk
2 to the rights, well-being, health and safety of a consumer. It
3 shall expire not more than six months from date of issuance, and
4 not be consecutively reissued unless the provisional recommendation
5 is that of the State Fire Marshal.

6 (d) A renewal license or approval may be issued of any
7 duration up to two years at the discretion of the secretary. In
8 the event a renewal license is not issued, the facility must make
9 discharge plans for residents and cease operation within thirty
10 days of the expiration of the license.

11 (e) A certificate of registration is effective for a period up
12 to two years from the date of issuance, unless revoked based on
13 evidence of a failure to comply with this article or any rules
14 promulgated pursuant to this article. The certificate of
15 registration shall be reinstated upon application to the secretary,
16 including a statement of assurance of continued compliance with the
17 legislative rules promulgated pursuant to this article.

18 (f) The license, approval or registration issued under this
19 article is not transferable and applies only to the facility and
20 its location stated in the application. The license, registration
21 or approval shall be publicly displayed: *Provided, That foster and*
22 adoptive family homes, informal family child care homes and
23 relative family child care homes shall be required to display

1 registration certificates of registration or approval upon request
2 rather than by posting.

3 (g) Provisional certificates of registration may be issued to
4 family child care homes.

5 (h) The secretary, as a condition of issuing a license,
6 registration or approval, may:

7 (1) Limit the age, sex or type of problems of children allowed
8 admission to a particular facility;

9 (2) Prohibit intake of any children; or

10 (3) Reduce the number of children which the agency, facility
11 or home operated by the agency is licensed, approved, certified or
12 registered to receive.

13 **§49-2-307. Investigative authority.**

14 (a) The secretary shall enforce this article.

15 (b) An on-site evaluation of every facility regulated pursuant
16 to this chapter, except registered family child care homes,
17 informal family child care and relative family child care homes
18 shall be conducted no less than once per year by announced or
19 unannounced visits.

20 (c) A random sample of not less than five percent of the total
21 number of registered family child care homes, informal family child
22 care homes and relative family child care homes shall be monitored
23 annually through on-site evaluations.

1 (d) The secretary shall have access to the premises,
2 personnel, children in care and records of each facility subject to
3 inspection, including at a minimum, case records, corporate and
4 financial records and board minutes. Applicants for licenses,
5 approvals, and certificates of registration shall consent to
6 reasonable on-site administrative inspections, made with or without
7 prior notice, as a condition of licensing, approval, or
8 registration.

9 (e) When a complaint is received by the secretary alleging
10 violations of licensure, approval, or registration requirements,
11 the secretary shall investigate the allegations. The secretary may
12 notify the facility's director before or after a complaint is
13 investigated and shall cause a written report of the results of the
14 investigation to be made.

15 (f) The secretary may enter any unlicensed, unregistered or
16 unapproved child care facility or personal residence for which
17 there is probable cause to believe that the facility or residence
18 is operating in violation of this article. Such entries shall be
19 made with a law-enforcement officer present. The secretary may
20 enter upon the premises of any unregistered residence only after
21 two attempts by the secretary to bring this facility into
22 compliance.

23 **§49-2-308. Revocation; provisional licensure and approval.**

1 (a) The secretary may revoke or make provisional the licensure
2 registration of any home facility or child welfare agency regulated
3 pursuant to this chapter if a facility materially violates this
4 article, or any terms or conditions of the license, registration or
5 approval issued, or fails to maintain established requirements of
6 child care: *Provided*, That this section does not apply to family
7 child care homes.

8 (b) The secretary may revoke the certificate of registration
9 of any family child care home if a facility materially violates
10 this article, or any terms or conditions of the registration
11 certificate issued, or fails to maintain established requirements
12 of child care.

13 **§49-2-309. Closing of facilities by the secretary; placement of**
14 **children.**

15 When the secretary finds that the operation of a facility
16 constitutes an immediate danger of serious harm to children served
17 by the facility, the secretary shall issue an order of closure
18 terminating operation of the facility. When necessary, the
19 secretary shall place or direct the placement of the children in a
20 residential facility which has been closed into appropriate
21 facilities. A facility closed by the secretary may not operate
22 pending administrative or judicial review without court order.

23 **§49-2-310. Supervision and consultation required.**

1 (a) The secretary shall provide supervision to ascertain
2 compliance with the rules promulgated pursuant to this chapter
3 through regular monitoring, visits to facilities, documentation,
4 evaluation and reporting. The secretary shall be responsible for
5 training and education, within fiscal limitations, specifically for
6 the improvement of care in family child care homes and facilities.
7 The secretary shall consult with applicants, the personnel of child
8 welfare agencies, and children under care to assure the highest
9 quality child care possible.

10 (b) The State Fire Marshal shall cooperate with the secretary
11 in the administration of this article by providing such reports and
12 assistance as may be requested by the secretary.

13 **§49-2-311. Penalties; injunctions.**

14 (a) Any individual or corporation which operates a child
15 welfare agency, residential facility or child care center without
16 a license when a license is required is guilty of a misdemeanor
17 and, upon conviction, shall be confined in jail not exceeding one
18 year, or fined not more than \$500, or both fined and confined.

19 (b) Any family child care facility which operates without a
20 license when a license is required is guilty of a misdemeanor and,
21 upon conviction, shall be fined not more than \$500.

22 (c) Where a violation of this article or a legislative rule
23 promulgated by the secretary may result in serious harm to children

1 under care, the secretary may seek injunctive relief against any
2 person, corporation, child welfare agency, child placing agency,
3 child care center, family child care facility, family child care
4 home or governmental official through proceedings instituted by the
5 Attorney General, or the appropriate county prosecuting attorney,
6 in the Circuit Court of Kanawha County or in the circuit court of
7 any county where the children are residing or may be found.

8 **§49-2-312. Rules.**

9 (a) The secretary shall promulgate legislative rules in
10 accordance with chapter twenty-nine-a of this code regarding the
11 licensure, approval, certification and registration of child care
12 facilities and the implementation of this article. The rules shall
13 provide at a minimum the requirement that every residential child
14 care facility shall be subject to an annual time study regarding
15 the quantification of staff supervision time at each facility.
16 Every residential child care facility shall participate in the time
17 study at the request of the department.

18 (b) The secretary shall review the rules promulgated pursuant
19 to this article at least once every five years, making revisions
20 when necessary or convenient.

21 (c) The rules shall incorporate by reference the requirements
22 of the Integrated Pest Management Program established by
23 legislative rule by the Department of Agriculture under section

1 four, article sixteen-a, chapter nineteen of this code.

2 **§49-2-313. Waivers and variances to rules.**

3 Waivers or variances of rules may be granted by the secretary
4 if the health, safety or well-being of a child would not be
5 endangered thereby. The secretary shall promulgate by legislative
6 rule criteria and procedures for the granting of waivers or
7 variances so that uniform practices may be maintained throughout
8 the state.

9 **§49-2-314. Annual reports; directory; licensing reports and**
10 **recommendations.**

11 (a) The secretary shall submit on or before January 1, of each
12 year a report to the Governor and the Legislative Oversight
13 Commission on Health and Human Resources Accountability, concerning
14 the regulation of child welfare agencies, child placing agencies,
15 child care centers, family child care facilities, family child care
16 homes, informal family child care homes, relative family child care
17 homes and child care facilities during the year. The report shall
18 include at a minimum, data on the number of children and staff at
19 each facility (except family child care, informal family child care
20 homes and relative family child care), applications received, types
21 of licenses, approvals and registrations granted, denied, made
22 provisional or revoked and any injunctions obtained or facility
23 closures ordered.

1 (b) The secretary also shall compile annually a directory of
2 licensed, certified and approved child care providers including a
3 brief description of their program and facilities, the program's
4 capacity and a general profile of children served. A listing of
5 family child care homes shall also be compiled annually.

6 (c) Licensing reports and recommendations for licensure which
7 are a part of the yearly review of each licensed facility shall be
8 sent to the facility director. Copies shall be available to the
9 public upon written request to the secretary.

10 **§49-2-315. Education of the public.**

11 The secretary shall provide ongoing education of the public in
12 regard to the requirements of this article through the use of mass
13 media and other methods as are deemed appropriate and within fiscal
14 limitations.

15 **§49-2-316. Administrative and judicial review.**

16 Any person, corporation, governmental official or child
17 welfare agency, aggrieved by a decision of the secretary made
18 pursuant to this chapter may contest the decision upon making a
19 request for a hearing by the secretary within thirty days of
20 receipt of notice of the decision. Administrative and judicial
21 review shall be made in accordance with article five, chapter
22 twenty-nine-a of this code. Any decision issued by the secretary
23 may be made effective from the date of issuance. Immediate relief

1 therefrom may be obtained upon a showing of good cause made by
2 verified petition to the Circuit Court of Kanawha County or the
3 circuit court of any county where the affected facility or child
4 welfare agency may be located. The dependency of administrative or
5 judicial review shall not prevent the secretary from obtaining
6 injunctive relief pursuant to section three hundred eleven of
7 article two of this chapter.

8 PART 4. MISCELLANEOUS PROVISIONS.

9 **§49-2-401. Parole of certain children to department.**

10 Children paroled from state institutions and homes for
11 juveniles shall be paroled to the department. Notwithstanding any
12 other provision of this code to the contrary and unless the court
13 which committed the child otherwise provides, the department shall
14 have supervisory control over every child so paroled, and shall
15 have authority to revoke the parole or to discharge the child from
16 parole. Upon the revocation of any parole and the return of the
17 parolee to the institution from which he or she was paroled, all
18 authority over the parolee, originally vested in such institution,
19 shall again become operative.

20 **§49-2-402. Duration of custody or guardianship of children**
21 **committed to department.**

22 (a) A child committed to the department for guardianship,
23 after termination of parental rights, shall remain in the care of

1 the department until he or she attains the age of eighteen years,
2 or is married, or is adopted, or guardianship is relinquished
3 through the court.

4 (b) A child committed to the department for custody shall
5 remain in the care of the department until he or she attains the
6 age of eighteen years, or until he or she is discharged because he
7 or she is no longer in need of care.

8 **§49-2-403. Voluntary Placement.**

9 (a) Within ninety days of the date of the signatures to a
10 voluntary placement agreement, after receipt of physical custody,
11 the department shall file with the court a petition for review of
12 the placement. The petition shall include:

13 (1) A statement regarding the child's situation; and,

14 (2) The circumstance that gives rise to the voluntary
15 placement.

16 (b) If the department intends to extend the voluntary
17 placement agreement, the department shall file with the court a
18 copy of the child's case plan.

19 (c) The court shall appoint an attorney for the child, who
20 shall receive a copy of the case plan as provided in subsection (b)
21 of this section.

22 (d) The court shall schedule a hearing and give notice of the
23 time and place and right to be present at such hearing to:

- 1 (1) The child's attorney;
- 2 (2) The child, if twelve years of age or older;
- 3 (3) The child's parents or guardians;
- 4 (4) The child's foster parents;
- 5 (5) Any preadoptive parent or relative providing care for the
6 child; and
- 7 (6) Any other such persons as the court may in its discretion
8 direct.

9 The child's presence at such hearing may be waived by the
10 child's attorney at the request of the child or if the child would
11 suffer emotional harm.

12 (e) At the conclusion of the proceedings, but no later than
13 ninety days after the date of the signatures to the voluntary
14 placement agreement, the court shall enter an order:

15 (1) Determining whether or not continuation of the voluntary
16 placement is in the best interests of the child;

17 (2) Specifying under what conditions the child's placement
18 shall continue;

19 (3) Specifying whether or not the department is required to
20 and has made reasonable efforts to preserve and to reunify the
21 family; and

22 (4) Providing a plan for the permanent placement of the child.

23 **§49-2-404. Subsidized adoption and legal guardianship.**

1 (a) From funds appropriated to the Department of Health and
2 Human Resources, the secretary shall establish a system of
3 assistance for facilitating the adoption or legal guardianship of
4 children. An adoption subsidy shall be available for children who
5 are legally free for adoption and who are dependents of the
6 department or a child welfare agency licensed to place children for
7 adoption. A legal guardianship subsidy shall not require the
8 surrender or termination of parental rights. For either subsidy,
9 the children must be in special circumstances because one or more
10 of the following conditions inhibit their adoption or legal
11 guardianship placement:

- 12 (1) They have a physical or mental disability;
13 (2) They are emotionally disturbed;
14 (3) They are older children;
15 (4) They are a part of a sibling group; or
16 (5) They are a member of a racial or ethnic minority.

17 (b) (1) The department shall provide assistance in the form of
18 subsidies or other services to parents who are found and approved
19 for adoption or legal guardianship of a child certified as eligible
20 for subsidy by the department, but before the final decree of
21 adoption or order of legal guardianship is entered, there must be
22 a written agreement between the family entering into the subsidized
23 adoption or legal guardianship and the department.

1 (2) Adoption or legal guardianship subsidies in individual
2 cases may commence with the adoption or legal guardianship
3 placement, and will vary with the needs of the child as well as the
4 availability of other resources to meet the child's needs. The
5 subsidy may be for special services only, or for money payments,
6 and either for a limited period, or for a long term, or for any
7 combination of the foregoing.

8 (3) The specific financial terms of the subsidy shall be
9 included in the agreement between the department and the adoptive
10 parents or legal guardians. The agreement may recognize and
11 provide for direct payment by the department of attorney's fees to
12 an attorney representing the adoptive parent.

13 (4) The amount of the time-limited or long-term subsidy may in
14 no case exceed that which would be allowable from time to time for
15 such child under foster family care or, in the case of a special
16 service, the reasonable fee for the service rendered.

17 (5) In addition, the department shall provide either Medicaid
18 or other health insurance coverage for any special needs child for
19 whom there is an adoption or legal guardianship assistance
20 agreement between the department and the adoptive parent or legal
21 guardian and who the department determines cannot be placed with an
22 adoptive parent or legal guardian without medical assistance
23 because the child has special needs for medical, mental health or

1 rehabilitative care.

2 (c) After reasonable efforts have been made without the use of
3 subsidy and no appropriate adoptive family or legal guardian has
4 been found for the child, the department shall certify the child as
5 eligible for a subsidy in the event of adoption or a legal
6 guardianship. Reasonable efforts to place a child without a subsidy
7 shall not be required if it is in the best interest of the child
8 because of such factors as the existence of significant emotional
9 ties developed between the child and the prospective parent or
10 guardian while in care as a foster child.

11 (d) If the child is the dependent of a voluntary licensed
12 child-placing agency, that agency shall present to the department
13 evidence of the inability to place the child for adoption or legal
14 guardianship without the use of subsidy or evidence that such
15 efforts would not be in the best interests of the child. In no
16 event shall the value of the services and assistance provided by
17 the department under an agreement pursuant to this section exceed
18 the value of assistance available to foster families in similar
19 circumstances. All records regarding subsidized adoptions or legal
20 guardianships shall be held in confidence; however, records
21 regarding the payment of public funds for subsidized adoptions or
22 legal guardianships shall be available for public inspection
23 provided they do not directly or indirectly identify any child or

1 persons receiving funds for such child.

2 **§49-2-405. Consent by agency or department to adoption of child;**
3 **statement of relinquishment by parent; petition to**
4 **terminate parental rights.**

5 (a) (1) Whenever a child welfare agency licensed to place
6 children for adoption or the Department of Health and Human
7 Resources has been given the permanent legal and physical custody
8 of any child and the rights of the mother and the rights of the
9 legal, determined, putative, outside or unknown father of the child
10 have been terminated by order of a court of competent jurisdiction
11 or by a legally executed relinquishment of parental rights, the
12 child welfare agency or the department may consent to the adoption
13 of the child pursuant to article twenty-two, chapter forty-eight of
14 this code.

15 (2) Relinquishment for an adoption to an agency or to the
16 department is required of the same persons whose consent or
17 relinquishment is required under section three hundred one, article
18 twenty-two, chapter forty-eight of this code. The form of any
19 relinquishment so required shall conform as nearly as practicable
20 to the requirements established in section three hundred three,
21 article twenty-two, chapter forty-eight, and all other provisions
22 of that article providing for relinquishment for adoption shall
23 govern the proceedings herein.

1 (3) For purposes of any placement of a child for adoption by
2 the department, the department shall first consider the suitability
3 and willingness of any known grandparent or grandparents to adopt
4 the child. Once any such grandparents who are interested in
5 adopting the child have been identified, the department shall
6 conduct a home study evaluation, including home visits and
7 individual interviews by a licensed social worker. If the
8 department determines, based on the home study evaluation, that the
9 grandparents would be suitable adoptive parents, it shall assure
10 that the grandparents are offered the placement of the child prior
11 to the consideration of any other prospective adoptive parents.

12 (4) The department shall make available, upon request, for
13 purposes of any private or agency adoption proceeding, preplacement
14 and post-placement counseling services by persons experienced in
15 adoption counseling, at no cost, to any person whose consent or
16 relinquishment is required pursuant to article twenty-two, chapter
17 forty-eight of this code.

18 (b) (1) Whenever the mother has executed a relinquishment
19 pursuant to this section, and the legal, determined, putative,
20 outsider or unknown father, as those terms are defined pursuant to
21 the provisions of, part one, article twenty-two, chapter
22 forty-eight of this code, has not executed a relinquishment, the
23 child welfare agency or the department may, by verified petition,

1 seek to have the father's rights terminated based upon the grounds
2 of abandonment or neglect of said child. Abandonment may be
3 established in accordance with section three hundred six, article
4 twenty-two, chapter forty-eight of this code.

5 (2) Unless waived by a writing acknowledged as in the case of
6 deeds or by other proper means, notice of the petition shall be
7 served on any person entitled to parental rights of a child prior
8 to its adoption who has not signed a relinquishment of custody of
9 the child.

10 (3) In addition, notice shall be given to any putative,
11 outsider or unknown father who has asserted or exercised parental
12 rights and duties to and with the child and who has not
13 relinquished any parental rights and such rights have not otherwise
14 been terminated, or who has not had reasonable opportunity before
15 or after the birth of the child to assert or exercise such rights:
16 Provided, That if such child is more than six months old at the
17 time such notice would be required and such father has not asserted
18 or exercised his or her parental rights and he or she knew the
19 whereabouts of the child, then such father shall be presumed to
20 have had reasonable opportunity to assert or exercise such rights.

21 (c)(1) Upon the filing of the verified petition seeking to
22 have the parental rights terminated, the court shall set a hearing
23 on the petition. A copy of the petition and notice of the date,

1 time and place of the hearing on said petition shall be personally
2 served on any respondent at least twenty days prior to the date set
3 for the hearing.

4 (2) Such notice shall inform the person that his or her
5 parental rights, if any, may be terminated in the proceeding and
6 that such person may appear and defend any such rights within
7 twenty days of such service. In the case of any such person who is
8 a nonresident or whose whereabouts are unknown, service shall be
9 achieved: (1) By personal service; (2) by registered or certified
10 mail, return receipt requested, postage prepaid, to the person's
11 last known address, with instructions to forward; or (3) by
12 publication. If personal service is not acquired, then if the
13 person giving notice shall have any knowledge of the whereabouts of
14 the person to be served, including a last known address, service by
15 mail shall be first attempted as herein provided. Any such service
16 achieved by mail shall be complete upon mailing and shall be
17 sufficient service without the need for notice by publication. In
18 the event that no return receipt is received giving adequate
19 evidence of receipt of the notice by the addressee or of receipt of
20 the notice at the address to which the notice was mailed or
21 forwarded, or if the whereabouts of the person are unknown, then
22 the person required to give notice shall file with the court an
23 affidavit setting forth the circumstances of any attempt to serve

1 the notice by mail, and the diligent efforts to ascertain the
2 whereabouts of the person to be served. If the court determines
3 that the whereabouts of the person to be served cannot be
4 ascertained and that due diligence has been exercised to ascertain
5 such person's whereabouts, then the court shall order service of
6 such notice by publication as a Class II publication in compliance
7 with article three, chapter fifty-nine of this code, and the
8 publication area shall be the county where such proceedings are
9 had, and in the county where the person to be served was last known
10 to reside. In the case of a person under disability, service shall
11 be made on the person and his or her personal representative, or if
12 there be none, on a guardian ad litem.

13 (3) In the case of service by publication or mail or service
14 on a personal representative or a guardian ad litem, the person
15 shall be allowed thirty days from the date of the first publication
16 or mailing of such service on a personal representative or guardian
17 ad litem in which to appear and defend such parental rights.

18 (d) A petition under this section may be instituted in the
19 county where the child resides or where the child is living.

20 (e) If the court finds that the person certified to parental
21 rights is guilty of the allegations set forth in the petition, the
22 court shall enter an order terminating his or her parental rights
23 and shall award the legal and physical custody and control of said

1 child to the petitioner.

2 **ARTICLE 3. CHILDREN WITH SPECIAL NEEDS.**

3 **§49-3-101. Children to whom article applies.**

4 It is the intention of this article that services for children
5 with special health care needs shall be extended only to those
6 children for whom adequate care, treatment and rehabilitation are
7 not available from other than public sources.

8 **§49-3-102. Powers of the Secretary.**

9 In the care and treatment of children with special health care
10 needs the Secretary of the Department of Health and Human
11 Resources, so far as funds are available for the following
12 purposes:

13 (1) Locate children with special health care needs requiring
14 medical, surgical or other corrective treatment and provide
15 competent diagnosis to determine the treatment required.

16 (2) Supply to children with special health care needs
17 treatment, including hospitalization and aftercare leading to
18 correction and rehabilitation.

19 (3) Guide and supervise children with special health care
20 needs to assure adequate care and treatment.

21 **§49-3-103. Report of birth of special health care needs child.**

22 Within thirty days after the birth of a child with a
23 congenital deformity, the physician, midwife or other person

1 attending the birth shall report to the Department of Health and
2 Human Resources, on forms prescribed by them, the birth of such
3 child.

4 The report shall be solely for the use of the Department of
5 Health and Human Resources and shall not be open for public
6 inspection.

7 **§49-3-104. Assistance by other agencies.**

8 So far as practicable, the services and facilities of the
9 State Department of Education, The Division of Vocational
10 Rehabilitation Services and Division of Corrections or their
11 successor organizations shall be available to the Department of
12 Health and Human Resources for the purposes of this article.

13 **§49-3-105. Cost of treatment.**

14 All payments from any corporation, association, program or
15 fund providing insurance coverage or other payment for medicine,
16 medical, surgical and hospital treatment, crutches, artificial
17 limbs and such other and additional approved mechanical appliances
18 and devices as may be reasonably required for a child with special
19 health care needs, shall be applied toward the total cost of
20 treatment.

21 **ARTICLE 4. WEST VIRGINIA FAMILY SUPPORT PROGRAM.**

22 **§49-4-101. Findings.**

23 (a) The West Virginia Legislature finds that families are the

1 greatest resource available to individuals with developmental
2 disabilities, and they must be supported in their role as primary
3 caregivers. It further finds that supporting families in their
4 effort to care for their family members at home is more efficient,
5 cost effective and humane than placing the developmentally disabled
6 person in an institutional setting.

7 (b) The Legislature accepts the following as basic principles
8 for providing services to support families of people with
9 developmental disabilities:

10 (1) The quality of life of children with developmental
11 disabilities, their families and communities is enhanced by caring
12 for the children within their own homes. Children with
13 disabilities benefit by growing up in their own families, families
14 benefit by staying together and communities benefit from the
15 inclusion of people with diverse abilities.

16 (2) Adults with developmental disabilities should be afforded
17 the opportunity to make decisions for themselves, live in typical
18 homes and communities and exercise their full rights as citizens.
19 Developmentally disabled adults should have the option of living
20 separately from their families but when this is not the case,
21 families of disabled adults should be provided the support services
22 they need.

23 (3) Services and support for families should be individualized

1 and flexible, should focus on the entire family and should promote
2 the inclusion of people with developmental disabilities in all
3 aspects of school and community life.

4 (4) Families are the best experts about what they need. The
5 service system can best assist families by supporting families as
6 decision makers as opposed to making decisions for them.

7 (c) The Legislature finds that there are at least ten thousand
8 West Virginians with developmental disabilities who live with and
9 are supported by their families, and that the state's policy is to
10 prevent the institutionalization of people with developmental
11 disabilities.

12 (d) To maximize the number of families supported by this
13 program, each family will contribute to the cost of goods and
14 services based on their ability to pay, taking into account their
15 needs and resources.

16 (e) Therefore, it is the intent of the Legislature to
17 initiate, within the resources available, a program of services to
18 support families who are caring for family members with
19 developmental disabilities in their homes.

20 **§49-4-102. Family support services.**

21 (a) The regional family support agency, designated under
22 article eight of this chapter, shall direct and be responsible for
23 the individual assessment of each developmentally disabled person

1 which it has designated and shall prepare a service plan with such
2 developmentally disabled person's family. The needs and
3 preferences of the family will be the basis for determining what
4 goods and services will be made available within the resources
5 available.

6 (b) The family support program may provide funds to families
7 to purchase goods and services included in the family service plan.
8 Such goods and services related to the care of the developmentally
9 disabled person may include, but are not limited to:

- 10 (1) Respite care;
- 11 (2) Personal and attendant care;
- 12 (3) Child care;
- 13 (4) Architectural and vehicular modifications;
- 14 (5) Health-related costs not otherwise covered;
- 15 (6) Equipment and supplies;
- 16 (7) Specialized nutrition and clothing;
- 17 (8) Homemaker services;
- 18 (9) Transportation;
- 19 (10) Utility costs;
- 20 (11) Integrated community activities; and
- 21 (12) Training and technical assistance.

22 (c) As part of the family support program, the regional family
23 support agency, designated under section five of this article,

1 shall provide case management for each family to provide
2 information, service coordination and other assistance as needed by
3 the family.

4 (d) The family support program shall assist families of
5 developmentally disabled adults in planning and obtaining community
6 living arrangements, employment services and other resources needed
7 to achieve, to the greatest extent possible, independence,
8 productivity and integration of the developmentally disabled adult
9 into the community.

10 (e) The family support program shall conduct outreach to
11 identify families in need of assistance and shall maintain a
12 waiting list of individuals and families in the event that there
13 are insufficient resources to provide services to all those who
14 request them.

15 (f) The family support program may provide for differential
16 fees for services under the program or for appropriate cost
17 participation by the recipient families consistent with the goals
18 of the program and the overall financial condition of the family.

19 (g) Funds, goods or services provided to eligible families by
20 the family support program under this article shall not be
21 considered as income to those families for any purpose under this
22 code or under the rules and regulations of any agency of state
23 government.

1 **§49-4-103. Eligibility; primary focus.**

2 (a) To be eligible for the family support program, a family
3 must have at least one family member who has a developmental
4 disability, as defined in this article, living with the family.

5 (b) The primary focus of the family support program is
6 supporting: (1) Developmentally disabled children, school age and
7 younger, within their families; (2) adults with developmental
8 disabilities who choose to live with their families; and (3) adults
9 with developmental disabilities for whom other community living
10 arrangements are not available and who are living with their
11 families.

12 **§49-4-104. Program administration.**

13 (a) The administering agency for the family support program is
14 the Department of Health and Human Resources.

15 (b) The Department of Health and Human Resources shall
16 initially implement the family support program through contracts
17 with an agency within four of the state's behavioral health
18 regions, with the four regions to be determined by the Department
19 of Health and Human Resources in consultation with the state family
20 support council. These regional family support agencies of the
21 family support program will be responsible for implementing this
22 article and subsequent policies for the families of persons with
23 developmental disabilities residing within their respective

1 regions.

2 (c) The Department of Health and Human Resources, in
3 conjunction with the state family support council, shall adopt
4 policies and procedures regarding:

5 (1) Development of annual budgets;

6 (2) Program specifications;

7 (3) Criteria for awarding contracts for operation of regional
8 family support programs and the role of regional family support
9 councils;

10 (4) Annual evaluation of services provided by each regional
11 family support agency, including consumer satisfaction;

12 (5) Coordination of the family support program and the use of
13 its funds, throughout the state and within each region, with other
14 publicly funded programs, including Medicaid;

15 (6) Performance of family needs assessments and development of
16 family service plans;

17 (7) Methodology for allocating resources to families within
18 the funds available; and

19 (8) Resolution of grievances filed by families pertaining to
20 actions of the family support program.

21 (d) The Department of Health and Human Resources shall submit
22 a report to the Governor and the Legislature on the family support
23 program by September 15 of every year so long as the program is

1 funded.

2 **§49-4-105. Regional and state family support councils.**

3 (a) Each regional family support agency shall establish a
4 regional family support council comprised of at least seven
5 members, of whom at least a majority shall be persons with
6 developmental disabilities or their parents or primary caregivers.
7 Each regional family support council shall meet at least quarterly
8 to advise the regional family support agency on matters related to
9 local implementation of the family support program and to
10 communicate information and recommendations regarding the family
11 support program to the state Family Support Council.

12 (b) The Secretary of the Department of Health and Human
13 Resources shall appoint a state Family Support Council comprised of
14 at least twenty-two members, of whom at least a majority shall be
15 persons with developmental disabilities or their parents or primary
16 caregivers. A representative elected by each regional council
17 shall serve on the state council. The state council shall also
18 include a representative from each of the following agencies: The
19 state Developmental Disabilities Council, the state Protection and
20 Advocacy Agency, the Center for Excellence in Disabilities, the
21 Office of Special Education, the Behavioral Health Care Providers
22 Association and the Early Intervention Interagency Coordinating
23 Council.

1 (c) The state council shall meet at least quarterly. The
2 state council will participate in the development of program
3 policies and procedures, annual contracts and perform such other
4 duties as are necessary for statewide implementation of the family
5 support program.

6 (d) Members of the state and regional councils who are a
7 member of the family or the primary caregiver of a developmentally
8 disabled person shall be reimbursed for travel and lodging expenses
9 incurred in attending official meetings of their councils. Child
10 care expenses related to the developmentally disabled person shall
11 also be reimbursed. Members of regional councils who are eligible
12 for expense reimbursement shall be reimbursed by their respective
13 regional family support agencies.

14 **ARTICLE 5. SPECIALIZED ADVOCACY PROGRAMS.**

15 **§49-5-101. Child advocacy centers.**

16 Child advocacy centers provide the following services to
17 children in the child welfare program in West Virginia:

18 (1) Operation of a child-appropriate or child-friendly
19 facility that provides a comfortable, private setting that is both
20 physically and psychologically safe for clients.

21 (2) Participation in a multidisciplinary team for response to
22 child abuse allegations.

23 (3) Operate a legal entity responsible for program and fiscal

1 operations that has established and implemented basic sound
2 administrative practices.

3 (4) Promote policies, practices and procedures that are
4 culturally competent and diverse. Cultural competency is defined
5 as the capacity to function in more than one culture, requiring the
6 ability to appreciate, understand and interact with members of
7 diverse populations within the local community.

8 (5) Conduct forensic interviews in a manner which is of a
9 neutral, fact-finding nature and coordinated to avoid duplicative
10 interviewing.

11 (6) Provide specialized medical evaluation and treatment made
12 available to clients as part of the team response, either at the
13 CAC or through coordination and referral with other specialized
14 medical providers.

15 (7) Offer therapeutic intervention through specialized mental
16 health services made available as part of the team response, either
17 at the child advocacy center or through coordination and referral
18 with other appropriate treatment providers.

19 (8) Victim support and advocacy as part of the team response,
20 either at the child advocacy center or through coordination with
21 other providers, throughout the investigation and subsequent legal
22 proceedings.

23 (9) Conducting team discussions and providing information

1 sharing regarding the investigation, case status and services
2 needed by the child and family are to occur on a routine basis.

3 (10) Developing and implementing a system for monitoring case
4 progress and tracking case outcomes for team components.

5 (11) May establish a safe exchange location for children and
6 families who have a parenting agreement or an order providing for
7 visitation or custody of the children that require a safe exchange
8 location.

9 **§49-5-102. Court Appointed Special Advocate.**

10 A court appointed special advocate or CASA shall operate as
11 follows:

12 (1) Standards: CASA programs shall be members in good standing
13 with the West Virginia Court Appointed Special Advocate
14 Association, Inc., and the National Court Appointed Special
15 Advocates Association and adhere to all standards set forth by
16 these entities.

17 (2) Organizational capacity: A designated legal entity
18 responsible for program and fiscal operations has been established
19 and implements basic sound administrative practice.

20 (3) Cultural competency and diversity: CASA programs promote
21 policies, practices and procedures that are culturally competent.

22 "Cultural competency" is defined as the capacity to function in
23 more than one culture, requiring the ability to appreciate,

1 understand and interact with members of diverse populations within
2 the local community.

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

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

7 (6) Training: Court appointed special advocates shall serve as
8 volunteers without compensation and shall receive training
9 consistent with state and nationally developed standards.

10 **ARTICLE 6. INTERSTATE COOPERATION.**

11 **PART 1. INTERSTATE COMPACT ON**

12 **THE PLACEMENT OF CHILDREN.**

13 **§49-6-101. Adoption of compact.**

14 The interstate compact on the placement of children is hereby
15 enacted into law and entered into with all other jurisdictions
16 legally joining therein in form substantially as follows:

17 INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

18 **Article I. Purpose and Policy.**

19 It is the purpose and policy of the party states to cooperate
20 with each other in the interstate placement of children to the end
21 that:

22 (a) Each child requiring placement shall receive the maximum
23 opportunity to be placed in a suitable environment and with persons

1 or institutions having appropriate qualifications and facilities to
2 provide a necessary and desirable degree and type of care.

3 (b) The appropriate authorities in a state where a child is to
4 be placed may have full opportunity to ascertain the circumstances
5 of the proposed placement, thereby promoting full compliance with
6 applicable requirements for the protection of the child.

7 (c) The proper authorities of the state from which the
8 placement is made may obtain the most complete information on the
9 basis of which to evaluate a projected placement before it is made.

10 (d) Appropriate jurisdictional arrangements for the care of
11 children will be promoted.

12 **Article II. Definitions.**

13 As used in this compact:

14 (a) "Child" means a person who, by reason of minority is
15 legally subject to parental, guardianship or similar control.

16 (b) "Sending agency" means a party state, officer or employee
17 thereof; a subdivision of a party state, or officer or employee
18 thereof; a court of a party state; a person, corporation,
19 association, charitable agency or other entity which sends, brings,
20 or causes to be sent or brought any child to another party state.

21 (c) "Receiving state" means the state to which a child is
22 sent, brought, or caused to be sent or brought, whether by public
23 authorities or private persons or agencies, and whether for

1 placement with state or local public authorities or for placement
2 with private agencies or persons.

3 (d) "Placement" means the arrangement for the care of a child
4 in a family free home or boarding home or in a child-caring agency
5 or institution but does not include any institution caring for the
6 mentally ill, mentally defective or epileptic or any institution
7 primarily educational in character, and any hospital or other
8 medical facility.

9 **Article III. Conditions for Replacement.**

10 (a) No sending agency shall send, bring, or cause to be sent
11 or brought into any other party state any child for placement in
12 foster care or as a preliminary to a possible adoption unless the
13 sending agency shall comply with each and every requirement set
14 forth in this article and with the applicable laws of the receiving
15 state governing the placement of children therein.

16 (b) Prior to sending, bringing or causing any child to be sent
17 or brought into a receiving state for placement in foster care or
18 as a preliminary to a possible adoption, the sending agency shall
19 furnish the appropriate public authorities in the receiving state
20 written notice of the intention to send, bring, or place the child
21 in the receiving state. The notice shall contain:

22 (1) The name, date and place of birth of the child.

23 (2) The identity and address or addresses of the parents or

1 legal guardian.

2 (3) The name and address of the person, agency or institution
3 to or with which the sending agency proposes to send, bring, or
4 place the child.

5 (4) A full statement of the reasons for such proposed action
6 and evidence of the authority pursuant to which the placement is
7 proposed to be made.

8 (c) Any public officer or agency in a receiving state which is
9 in receipt of a notice pursuant to paragraph (b) of this article
10 may request of the sending agency, or any other appropriate officer
11 or agency of or in the sending agency's state, and shall be
12 entitled to receive therefrom, such supporting or additional
13 information as it may deem necessary under the circumstances to
14 carry out the purpose and policy of this compact.

15 (d) The child shall not be sent, brought, or caused to be sent
16 or brought into the receiving state until the appropriate public
17 authorities in the receiving state shall notify the sending agency,
18 in writing, to the effect that the proposed placement does not
19 appear to be contrary to the interests of the child.

20 **Article IV. Penalty for Illegal Placement.**

21 The sending, bringing, or causing to be sent or brought into
22 any receiving state of a child in violation of the terms of this
23 compact shall constitute a violation of the laws respecting the

1 placement of children of both the state in which the sending agency
2 is located or from which it sends or brings the child and of the
3 receiving state. Such violation may be punished or subjected to
4 penalty in either jurisdiction in accordance with its laws. In
5 addition to liability for any such punishment or penalty, any such
6 violation shall constitute full and sufficient grounds for the
7 suspension or revocation of any license, permit, or other legal
8 authorization held by the sending agency which empowers or allows
9 it to place, or care for children.

10 **Article V. Retention of Jurisdiction.**

11 (a) The sending agency shall retain jurisdiction over the
12 child sufficient to determine all matters in relation to the
13 custody, supervision, care, treatment and disposition of the child
14 which it would have had if the child had remained in the sending
15 agency's state, until the child is adopted, reaches majority,
16 becomes self-supporting or is discharged with the concurrence of
17 the appropriate authority in the receiving state. Such
18 jurisdiction shall also include the power to effect or cause the
19 return of the child or its transfer to another location and custody
20 pursuant to law. The sending agency shall continue to have
21 financial responsibility for support and maintenance of the child
22 during the period of the placement. Nothing contained herein shall
23 defeat a claim of jurisdiction by a receiving state sufficient to

1 deal with an act of delinquency or crime committed therein.

2 (b) When the sending agency is a public agency, it may enter
3 into an agreement with an authorized public or private agency in
4 the receiving state providing for the performance of one or more
5 services in respect of such case by the latter as agent for the
6 sending agency.

7 (c) Nothing in this compact shall be construed to prevent a
8 private charitable agency authorized to place children in the
9 receiving state from performing services or acting as agent in that
10 state for a private charitable agency of the sending state; nor to
11 prevent the agency in the receiving state from discharging
12 financial responsibility for the support and maintenance of a child
13 who has been placed on behalf of the sending agency without
14 relieving the responsibility set forth in paragraph (a) hereof.

15 **Article VI. Institutional Care of Delinquent Children.**

16 A child adjudicated delinquent may be placed in an institution
17 in another party jurisdiction pursuant to this compact but no such
18 placement shall be made unless the child is given a court hearing
19 on notice to the parent or guardian with opportunity to be heard,
20 prior to his or her being sent to such other party jurisdiction for
21 institutional care and the court finds that:

22 1. Equivalent facilities for the child are not available in
23 the sending agency's jurisdiction; and

1 2. Institutional care in the other jurisdiction is in the
2 best interest of the child and will not produce undue hardship.

3 **Article VII. Compact Administrator.**

4 The executive head of each jurisdiction party to this compact
5 shall designate an officer who shall be general coordinator of
6 activities under this compact in his or her jurisdiction and who,
7 acting jointly with like officers of other party jurisdictions,
8 shall have power to promulgate rules and regulations to carry out
9 more effectively the terms and provisions of this compact.

10 **Article VIII. Limitations.**

11 This compact shall not apply to:

12 (a) The sending or bringing of a child into a receiving state
13 by his or her parent, stepparent, grandparent, adult brother or
14 sister, adult uncle or aunt, or his or her guardian and leaving the
15 child with any such relative or nonagency guardian in the receiving
16 state.

17 (b) Any placement, sending or bringing of a child into a
18 receiving state pursuant to any other interstate compact to which
19 both the state from which the child is sent or brought and the
20 receiving state are party, or to any other agreement between said
21 states which has the force of law.

22 **Article IX. Enactment and Withdrawal.**

23 This compact shall be open to joinder by any state, territory

1 or possession of the United States, the District of Columbia, the
2 Commonwealth of Puerto Rico, and, with the consent of Congress, the
3 government of Canada or any province thereof. It shall become
4 effective with respect to any such jurisdiction when such
5 jurisdiction has enacted the same into law. Withdrawal from this
6 compact shall be by the enactment of a statute repealing the same,
7 but shall not take effect until two years after the effective date
8 of such statute and until written notice of the withdrawal has been
9 given by the withdrawing state to the Governor of each other party
10 jurisdiction. Withdrawal of a party state shall not affect the
11 rights, duties and obligations under this compact of any sending
12 agency therein with respect to a placement made prior to the
13 effective date of withdrawal.

14 **Article X. Construction.**

15 The provisions of this compact shall be liberally construed to
16 effectuate the purposes thereof. The provisions of this compact
17 shall be severable and if any phrase, clause, sentence or provision
18 of this compact is declared to be contrary to the Constitution of
19 any party state or of the United States or the applicability
20 thereof to any government, agency, person or circumstance is held
21 invalid, the validity of the remainder of this compact and the
22 applicability thereof to any government, agency, person or
23 circumstance shall not be affected thereby. If this compact shall

1 be held contrary to the Constitution of any state party thereto,
2 the compact shall remain in full force and effect as to the
3 remaining states and in full force and effect as to the state
4 affected as to all severable matters.

5 **§49-6-102. Definitions; implementation.**

6 (a) Financial responsibility for any child placed pursuant to
7 the provisions of the Interstate Compact on the Placement of
8 Children shall be determined in accordance with the provisions of
9 Article V thereof in the first instance. However, in the event of
10 partial or complete default of performance thereunder, section one
11 hundred one, article two of this chapter may be invoked.

12 (b) The "appropriate public authorities" as used in Article
13 III of the Interstate Compact on the Placement of Children shall,
14 with reference to this state, mean the Department of Welfare and
15 said agency shall receive and act with reference to notices
16 required by said Article III.

17 (c) As used in paragraph (a) of Article V of the Interstate
18 Compact on the Placement of Children, the phrase "appropriate
19 authority in the receiving state" with reference to this state
20 shall mean the Department of Health and Human Resources.

21 (d) The officers and agencies of this state and its
22 subdivisions having authority to place children are hereby
23 empowered to enter into agreements with appropriate officers or

1 agencies of or in other party states pursuant to paragraph (b) of
2 Article V of the Interstate Compact on the Placement of Children.
3 Any such agreement which contains a financial commitment or imposes
4 a financial obligation on this state or subdivision or agency
5 thereof shall not be binding unless it has the approval in writing
6 of the Auditor in the case of the state and of the chief local
7 fiscal officer in the case of a subdivision of the state.

8 (e) Any requirements for visitation, inspection or supervision
9 of children, homes, institutions or other agencies in another party
10 state which may apply under sections five and eleven of article two
11 of this chapter shall be deemed to be met if performed pursuant to
12 an agreement entered into by appropriate officers or agencies of
13 this state or a subdivision thereof as contemplated by paragraph
14 (b) of Article V of the Interstate Compact on the Placement of
15 Children.

16 (f) Section fifteen, article two of this chapter does not
17 apply to placements made pursuant to the Interstate Compact on the
18 Placement of Children.

19 (g) Any court having jurisdiction to place delinquent children
20 may place such a child in an institution of or in another state
21 pursuant to Article VI of the Interstate Compact on the Placement
22 of Children and shall retain jurisdiction as provided in Article V
23 thereof.

1 (h) As used in Article VII of the interstate compact on the
2 placement of children, the term "executive head" means the
3 Governor. The Governor is hereby authorized to appoint a compact
4 administrator in accordance with the terms of that Article VII.

5 PART 2. INTERSTATE ADOPTION ASSISTANCE COMPACT.

6 **§49-6-201. Interstate adoption assistance compact; findings and**
7 **purpose.**

8 (a) The Legislature finds that:

9 (1) Finding adoptive families for children, for whom state
10 assistance is desirable pursuant to section four hundred four,
11 article two of this chapter and assuring the protection of the
12 interests of the children affected during the entire assistance
13 period, require special measures when the adoptive parents move to
14 other states or are residents of another state; and

15 (2) Provision of medical and other necessary services for
16 children, with state assistance, encounters special difficulties
17 when the provision of services takes place in other states.

18 (b) The purposes of sections two hundred one through two
19 hundred four of this article are to:

20 (1) Authorize the Department of Health and Human Resources to
21 enter into interstate agreements with agencies of other states for
22 the protection of children on behalf of whom adoption assistance is
23 being provided by the Department of Health and Human Resources

1 (2) Provide procedures for interstate children's adoption
2 assistance payments, including medical payments.

3 **§49-6-202. Interstate adoption assistance compacts authorized;**
4 **definitions.**

5 (a) The Department of Health and Human Resources is authorized
6 to develop, participate in the development of, negotiate and enter
7 into one or more interstate compacts on behalf of this state with
8 other states to implement one or more of the purposes set forth in
9 sections one through four of this article. When so entered into,
10 and for so long as it shall remain in force, such a compact shall
11 have the force and effect of law.

12 (b) For the purposes of sections one through four of this
13 article, the term "state" means a state of the United States, the
14 District of Columbia, the Commonwealth of Puerto Rico, the Virgin
15 Islands, Guam, the Commonwealth of the Northern Mariana Islands, or
16 a Territory or Possession of or administered by the United States.

17 (c) For the purposes of sections one through four of this
18 article, the term "adoption assistance state" means the state that
19 is signatory to an adoption assistance agreement in a particular
20 case.

21 (d) For the purposes of sections one through four of this
22 article, the term "residence state" means the state of which the
23 child is a resident by virtue of the residence of the adoptive

1 parents.

2 **§49-6-203. Interstate adoption assistance compact; contents of**
3 **compact.**

4 A compact entered into pursuant to the authority conferred by
5 sections one through four of this article shall have the following
6 content:

7 (1) A provision making it available to joinder by all states.

8 (2) A provision or provisions for withdrawal from the compact
9 upon written notice to the parties, but with a period of one year
10 between the date of the notice and the effective date of the
11 withdrawal.

12 (3) A requirement that the protections afforded by or pursuant
13 to the compact continue in force for the duration of the adoption
14 assistance and be applicable to all children and their adoptive
15 parents who on the effective date of the withdrawal are receiving
16 adoption assistance from a party state other than the one in which
17 they are resident and have their principal place of abode.

18 (4) A requirement that each instance of adoption assistance to
19 which the compact applies be covered by an adoption assistance
20 agreement in writing between the adoptive parents and the state
21 child welfare agency of the state which undertakes to provide the
22 adoption assistance, and further, that any such agreement be
23 expressly for the benefit of the adopted child and enforceable by

1 the adoptive parents, and the state agency providing the adoption
2 assistance.

3 (5) Such other provisions as may be appropriate to implement
4 the proper administration of the compact.

5 **§49-6-204. Medical assistance.**

6 (a) A child with special needs resident in this state who is
7 the subject of an adoption assistance agreement with another state
8 shall be entitled to receive a medical assistance identification
9 from this state upon the filing in the department of human services
10 of a certified copy of the adoption assistance agreement obtained
11 from the adoption assistance state. In accordance with regulations
12 of the Department of Health and Human Resources the adoptive
13 parents shall be required at least annually to show that the
14 agreement is still in force or has been renewed.

15 (b) The Department of Health and Human Resources shall
16 consider the holder of a medical assistance identification pursuant
17 to this section as any other holder of a medical assistance
18 identification under the laws of this state and shall process and
19 make payment on claims on account of such holder in the same manner
20 and pursuant to the same conditions and procedures as for other
21 recipients of medical assistance.

22 (c) The Department of Health and Human Resources shall provide
23 coverage and benefits for a child who is in another state and who

1 is covered by an adoption assistance agreement made by the
2 Department of Health and Human Resources for the coverage or
3 benefits, if any, not provided by the residence state. To this
4 end, the adoptive parents acting for the child may submit evidence
5 of payment for services or benefit amounts not payable in the
6 residence state and shall be reimbursed therefor. However, there
7 shall be no reimbursement for services or benefit amounts covered
8 under any insurance or other third party medical contract or
9 arrangement held by the child or the adoptive parents. The
10 Department of Health and Human Resources shall make regulations
11 implementing this section. The additional coverages and benefit
12 amounts provided pursuant to this section shall be for services to
13 the cost of which there is no federal contribution, or which, if
14 federally aided, are not provided by the residence state. Among
15 other things, such regulations shall include procedures to be
16 followed in obtaining prior approvals for services in those
17 instances where required for the assistance.

18 (d) Any person who submits a claim for payment or
19 reimbursement for services or benefits pursuant to this section or
20 the making of any statement in connection therewith, which claim of
21 statement the maker knows or should know to be false, misleading or
22 fraudulent is guilty of a felony and, upon conviction, shall be
23 fined not more than \$10,000, or imprisoned in a correctional

1 facility not more than two years, or both fined and imprisoned.

2 (e) This section applies only to medical assistance for
3 children under adoption assistance agreements from states that have
4 entered into a compact with this state under which the other state
5 provides medical assistance to children with special needs under
6 adoption assistance agreements made by this state. All other
7 children entitled to medical assistance pursuant to adoption
8 assistance agreements entered into by this state shall be eligible
9 to receive it in accordance with the laws and procedures applicable
10 thereto.

11 PART THREE. INTERSTATE COMPACT ON JUVENILES.

12 **§49-6-301. Legislative findings and policy.**

13 It is hereby found and declared: (1) That juveniles who are
14 not under proper supervision and control, or who have absconded,
15 escaped or run away, are likely to endanger their own health,
16 morals and welfare, and the health, morals and welfare of others;
17 (2) that the cooperation of this state with other states is
18 necessary to provide for the welfare and protection of juveniles
19 and of the people of this state.

20 It shall therefore be the policy of this state, in adopting
21 the interstate compact on juveniles, to cooperate fully with other
22 states: (1) In returning juveniles to such other states whenever
23 their return is sought; and (2) in accepting the return of

1 juveniles whenever a juvenile residing in this state is found or
 2 apprehended in another state and in taking all measures to initiate
 3 proceedings for the return of such juveniles.

4 **§49-6-302. Execution of compact.**

5 The Governor is hereby authorized and directed to execute a
 6 compact on behalf of this state with any other state or states
 7 legally joining therein in the form substantially as follows:

8 INTERSTATE COMPACT ON JUVENILES

9 The contracting states solemnly agree:

10 **Article I -- Findings and Purposes**

11 That juveniles who are not under proper supervision and
 12 control, or who have absconded, escaped or run away, are likely to
 13 endanger their own health, morals and welfare, and the health,
 14 morals and welfare of others. The cooperation of the states party
 15 to this compact is therefore necessary to provide for the welfare
 16 and protection of juveniles and of the public with respect to: (1)
 17 Cooperative supervision of delinquent juveniles on probation or
 18 parole; (2) the return, from one state to another, of delinquent
 19 juveniles who have escaped or absconded; (3) the return, from one
 20 state to another, of nondelinquent juveniles who have run away from
 21 home; and (4) additional measures for the protection of juveniles
 22 and of the public, which any two or more of the party states may
 23 find desirable to undertake cooperatively. In carrying out the

1 provisions of this compact the party states shall be guided by the
2 noncriminal, reformative and protective policies which guide their
3 laws concerning delinquent, neglected or dependent juveniles
4 generally. It shall be the policy of the states party to this
5 compact to cooperate and observe their respective responsibilities
6 for the prompt return and acceptance of juveniles and delinquent
7 juveniles who become subject to the provisions of this compact.
8 The provisions of this compact shall be reasonably and liberally
9 construed to accomplish the foregoing purposes.

10 **Article II -- Existing Rights and Remedies**

11 That all remedies and procedures provided by this compact
12 shall be in addition to and not in substitution for other rights,
13 remedies and procedures, and shall not be in derogation of parental
14 rights and responsibilities.

15 **Article III -- Definitions**

16 That for the purposes of this compact:

17 "Delinquent juvenile" means any juvenile who has been adjudged
18 delinquent and who, at the time the provisions of this compact are
19 invoked, is still subject to the jurisdiction of the court that has
20 made such adjudication or to the jurisdiction or supervision of an
21 agency or institution pursuant to an order of such court.

22 "Probation or parole" means any kind of conditional release of
23 juveniles authorized under the laws of the states party hereto.

1 "Court" means any court having jurisdiction over delinquent,
2 neglected or dependent children.

3 "State" means any state, territory or possession of the United
4 States, the District of Columbia, and the Commonwealth of Puerto
5 Rico.

6 "Residence" or any variant thereof means a place at which a
7 home or regular place of abode is maintained.

8 **Article IV -- Return of Runaways**

9 (a) That the parent, guardian, person or agency entitled to
10 legal custody of a juvenile who has not been adjudged delinquent
11 but who has run away without the consent of such parent, guardian,
12 person or agency may petition the appropriate court in the
13 demanding state for the issuance of a requisition for his or her
14 return. The petition shall state the name and age of the juvenile,
15 the name of the petitioner and the basis of entitlement to the
16 juvenile's custody, the circumstances of his or her running away,
17 his or her location if known at the time application is made, and
18 such other facts as may tend to show that the juvenile who has run
19 away is endangering his or her own welfare or the welfare of others
20 and is not an emancipated minor. The petition shall be verified by
21 affidavit, shall be executed in duplicate, and shall be accompanied
22 by two certified copies of the document or documents on which the
23 petitioner's entitlement to the juvenile's custody is based, such

1 as birth certificates, letters of guardianship, or custody decrees.
2 Such further affidavits and other documents as may be deemed proper
3 may be submitted with such petition. The judge of the court to
4 which this application is made may hold a hearing thereon to
5 determine whether for the purposes of this compact the petitioner
6 is entitled to the legal custody of the juvenile, whether or not it
7 appears that the juvenile has in fact run away without consent,
8 whether or not he or she is an emancipated minor, and whether or
9 not it is in the best interest of the juvenile to compel his or her
10 return to the state. If the judge determines, either with or
11 without a hearing, that the juvenile should be returned, he or she
12 shall present to the appropriate court or to the executive
13 authority of the state where the juvenile is alleged to be located
14 a written requisition for the return of such juvenile. Such
15 requisition shall set forth the name and age of the juvenile, the
16 determination of the court that the juvenile has run away without
17 the consent of a parent, guardian, person or agency entitled to his
18 or her legal custody, and that it is in the best interest and for
19 the protection of such juvenile that he or she be returned. In the
20 event that a proceeding for the adjudication of the juvenile as a
21 delinquent, neglected or dependent juvenile is pending in the court
22 at the time when such juvenile runs away, the court may issue a
23 requisition for the return of such juvenile upon its own motion,

1 regardless of the consent of the parent, guardian, person or agency
2 entitled to legal custody, reciting therein the nature and
3 circumstances of the pending proceeding. The requisition shall in
4 every case be executed in duplicate and shall be signed by the
5 judge. One copy of the requisition shall be filed with the compact
6 administrator of the demanding state, there to remain on file
7 subject to the provisions of law governing records of such court.
8 Upon the receipt of a requisition demanding the return of a
9 juvenile who has run away, the court or the executive authority to
10 whom the requisition is addressed shall issue an order to any peace
11 officer or other appropriate person directing him or her to take
12 into custody and detain such juvenile. Such detention order must
13 substantially recite the facts necessary to the validity of its
14 issuance hereunder. No juvenile detained upon such order shall be
15 delivered over to the officer whom the court demanding him or her
16 shall have appointed to receive him or her, unless he or she shall
17 first be taken forthwith before a judge of a court in the state,
18 who shall inform him or her of the demand made for his or her
19 return, and who may appoint counsel or guardian ad litem for him or
20 her. If the judge of such court shall find that the requisition is
21 in order, he or she shall deliver such juvenile over to the officer
22 whom the court demanding him or her shall have appointed to receive
23 him or her. The judge, however, may fix a reasonable time to be

1 allowed for the purpose of testing the legality of the proceeding.

2 Upon reasonable information that a person is a juvenile who
3 has run away from another state party to this compact without the
4 consent of a parent, guardian, person or agency entitled to his or
5 her legal custody, such juvenile may be taken into custody without
6 a requisition and brought forthwith before a judge of the
7 appropriate court who may appoint counsel or guardian ad litem for
8 such juvenile and who shall determine after a hearing whether
9 sufficient cause exists to hold the person, subject to the order of
10 the court, for his or her own protection and welfare, for such a
11 time not exceeding ninety days as will enable his or her return to
12 another state party to this compact pursuant to a requisition for
13 his or her return from a court of that state. If, at the time when
14 a state seeks the return of a juvenile who has run away, there is
15 pending in the state wherein he or she is found any criminal
16 charge, or any proceeding to have him or her adjudicated a
17 delinquent juvenile for an act committed in such state, or if he or
18 she is suspected of having committed within such state a criminal
19 offense or an act of juvenile delinquency, he or she shall not be
20 returned without the consent of such state until discharged from
21 prosecution or other form of proceeding, imprisonment, detention or
22 supervision for such offense or juvenile delinquency. The duly
23 accredited officers of any state party to this compact, upon the

1 establishment of their authority and the identity of the juvenile
2 being returned, shall be permitted to transport such juvenile
3 through any and all states party to this compact, without
4 interference. Upon his or her return to the state from which he or
5 she ran away, the juvenile shall be subject to such further
6 proceedings as may be appropriate under the laws of that state.

7 (b) That the state to which a juvenile is returned under this
8 article shall be responsible for payment of the transportation
9 costs of such return.

10 (c) That "juvenile" as used in this article means any person
11 who is a minor under the law of the state of residence of the
12 parent, guardian, person or agency entitled to the legal custody of
13 such minor.

14 **Article V -- Return of Escapees and Absconders**

15 (a) That the appropriate person or authority from whose
16 probation or parole supervision a delinquent juvenile has absconded
17 or from whose institutional custody he or she has escaped shall
18 present to the appropriate court or to the executive authority of
19 the state where the delinquent juvenile is alleged to be located a
20 written requisition for the return of such delinquent juvenile.
21 Such requisition shall state the name and age of the delinquent
22 juvenile, the particulars of his or her adjudication as a
23 delinquent juvenile, the circumstances of the breach of the terms

1 of his or her probation or parole or of his or her escape from an
2 institution or agency vested with his or her legal custody or
3 supervision, and the location of such delinquent juvenile, if
4 known, at the time the requisition is made. The requisition shall
5 be verified by affidavit, shall be executed in duplicate, and shall
6 be accompanied by two certified copies of the judgment, formal
7 adjudication, or order of commitment which subjects such delinquent
8 juvenile to probation or parole or to the legal custody of the
9 institution or agency concerned. Such further affidavits and other
10 documents as may be deemed proper may be submitted with such
11 requisition. One copy of the requisition shall be filed with the
12 compact administrator of the demanding state, there to remain on
13 file subject to the provisions of law governing records of the
14 appropriate court. Upon the receipt of a requisition demanding the
15 return of a delinquent juvenile who has absconded or escaped, the
16 court or the executive authority to whom the requisition is
17 addressed shall issue an order to any peace officer or other
18 appropriate person directing him or her to take into custody and
19 detain such delinquent juvenile. Such detention order must
20 substantially recite the facts necessary to the validity of its
21 issuance hereunder. No delinquent juvenile detained upon such
22 order shall be delivered over to the officer whom the appropriate
23 person or authority demanding him or her shall have appointed to

1 receive him or her, unless he or she shall first be taken forthwith
2 before a judge of an appropriate court in the state, who shall
3 inform him or her of the demand made for his or her return and who
4 may appoint counsel or guardian ad litem for him or her. If the
5 judge of such court shall find that the requisition is in order, he
6 or she shall deliver such delinquent juvenile over to the officer
7 whom the appropriate person or authority demanding him or her shall
8 have appointed to receive him or her. The judge, however, may fix
9 a reasonable time to be allowed for the purpose of testing the
10 legality of the proceeding.

11 Upon reasonable information that a person is a delinquent
12 juvenile who has absconded while on probation or parole, or escaped
13 from an institution or agency vested with his or her legal custody
14 or supervision in any state party to this compact, such person may
15 be taken into custody in any other state party to this compact
16 without a requisition. But in such event, he or she must be taken
17 forthwith before a judge of the appropriate court, who may appoint
18 counsel or guardian ad litem for such person and who shall
19 determine, after a hearing, whether sufficient cause exists to hold
20 the person subject to the order of the court for such a time, not
21 exceeding ninety days, as will enable his or her detention under a
22 detention order issued on a requisition pursuant to this article.
23 If, at the time when a state seeks the return of a delinquent

1 juvenile who has either absconded while on probation or parole or
2 escaped from an institution or agency vested with his or her legal
3 custody or supervision, there is pending in the state wherein he or
4 she is detained any criminal charge or any proceeding to have him
5 or her adjudicated a delinquent juvenile for an act committed in
6 such state, or if he or she is suspected of having committed within
7 such state a criminal offense or an act of juvenile delinquency, he
8 or she shall not be returned without the consent of such state
9 until discharged from prosecution or other form of proceeding,
10 imprisonment, detention or supervision for such offense or juvenile
11 delinquency. The duly accredited officers of any state party to
12 this compact, upon the establishment of their authority and the
13 identity of the delinquent juvenile being returned, shall be
14 permitted to transport such delinquent juvenile through any and all
15 states party to this compact, without interference. Upon his or
16 her return to the state from which he or she escaped or absconded,
17 the delinquent juvenile shall be subject to such further
18 proceedings as may be appropriate under the laws of that state.

19 (b) That the state to which a delinquent juvenile is returned
20 under this article shall be responsible for the payment of the
21 transportation costs of such return.

22 **Article VI -- Voluntary Return Procedure**

23 That any delinquent juvenile who has absconded while on

1 probation or parole, or escaped from an institution or agency
2 vested with his or her legal custody or supervision in any state
3 party to this compact, and any juvenile who has run away from any
4 state party to this compact, who is taken into custody without a
5 requisition in another state party to this compact under the
6 provisions of article IV (a) or of article V (a), may consent to
7 his or her immediate return to the state from which he or she
8 absconded, escaped or ran away. Such consent shall be given by the
9 juvenile or delinquent juvenile and his or her counsel or guardian
10 ad litem if any, by executing or subscribing a writing, in the
11 presence of a judge of the appropriate court, which states that the
12 juvenile or delinquent juvenile and his or her counsel or guardian
13 ad litem, if any, consent to his or her return to the demanding
14 state. Before such consent shall be executed or subscribed,
15 however, the judge, in the presence of counsel or guardian ad
16 litem, if any, shall inform the juvenile or delinquent juvenile of
17 his or her rights under this compact. When the consent has been
18 duly executed, it shall be forwarded to and filed with the compact
19 administrator of the state in which the court is located and the
20 judge shall direct the officer having the juvenile or delinquent
21 juvenile in custody to deliver him or her to the duly accredited
22 officer or officers of the state demanding his or her return, and
23 shall cause to be delivered to such officer or officers a copy of

1 the consent. The court may, however, upon the request of the state
2 to which the juvenile or delinquent juvenile is being returned,
3 order him or her to return unaccompanied to such state and shall
4 provide him or her with a copy of such court order; in such event
5 a copy of the consent shall be forwarded to the compact
6 administrator of the state to which said juvenile or delinquent
7 juvenile is ordered to return.

8 **Article VII -- Cooperative Supervision of Probationers**

9 (a) That the duly constituted judicial and administrative
10 authorities of a state party to this compact (herein called
11 "sending state") may permit any delinquent juvenile within such
12 state, placed on probation or parole, to reside in any other state
13 party to this compact (herein called "receiving state") while on
14 probation or parole, and the receiving state shall accept such
15 delinquent juvenile, if the parent, guardian or person entitled to
16 the legal custody of such delinquent juvenile is residing or
17 undertakes to reside within the receiving state. Before granting
18 such permission, opportunity shall be given to the receiving state
19 to make such investigations as it deems necessary. The authorities
20 of the sending state shall send to the authorities of the receiving
21 state copies of pertinent court orders, social case studies and all
22 other available information which may be of value to and assist the
23 receiving state in supervising a probationer or parolee under this

1 compact. A receiving state, in its discretion, may agree to accept
2 supervision of a probationer or parolee in cases where the parent,
3 guardian or person entitled to the legal custody of the delinquent
4 juvenile is not a resident of the receiving state, and if so
5 accepted the sending state may transfer supervision accordingly.

6 (b) That each receiving state will assume the duties of
7 visitation and of supervision over any such delinquent juvenile and
8 in the exercise of those duties will be governed by the same
9 standards of visitation and supervision that prevail for its own
10 delinquent juveniles released on probation or parole.

11 (c) That, after consultation between the appropriate
12 authorities of the sending state and of the receiving state as to
13 the desirability and necessity of returning such a delinquent
14 juvenile, the duly accredited officers of a sending state may enter
15 a receiving state and there apprehend and retake any such
16 delinquent juvenile on probation or parole. For that purpose, no
17 formalities will be required, other than establishing the authority
18 of the officer and the identity of the delinquent juvenile to be
19 retaken and returned. The decision of the sending state to retake
20 a delinquent juvenile on probation or parole shall be conclusive
21 upon and not reviewable within the receiving state, but if, at the
22 time the sending state seeks to retake a delinquent juvenile on
23 probation or parole, there is pending against him or her within the

1 receiving state any criminal charge or any proceeding to have him
2 or her adjudicated a delinquent juvenile for any act committed in
3 such state or if he or she is suspected of having committed within
4 such state a criminal offense or an act of juvenile delinquency, he
5 or she shall not be returned without the consent of the receiving
6 state until discharged from prosecution or other form of
7 proceeding, imprisonment, detention or supervision for such offense
8 or juvenile delinquency. The duly accredited officers of the
9 sending state shall be permitted to transport delinquent juveniles
10 being so returned through any and all states party to this compact,
11 without interference.

12 (d) That the sending state shall be responsible under this
13 article for paying the costs of transporting any delinquent
14 juvenile to the receiving state or of returning any delinquent
15 juvenile to the sending state.

16 **Article VIII -- Responsibility for Costs**

17 (a) That the provisions of articles IV (b), V (b) and VII (d)
18 of this compact shall not be construed to alter or affect any
19 internal relationship among departments, agencies and officers of
20 and in the government of a party state, or between a party state
21 and its subdivisions, as to the payment of costs, or
22 responsibilities therefor.

23 (b) That nothing in this compact shall be construed to prevent

1 any party state or subdivision thereof from asserting any right
2 against any person, agency or other entity in regard to costs for
3 which such party state or subdivision thereof may be responsible
4 pursuant to articles IV (b), V (b) or VII (d) of this compact.

5 **Article IX -- Detention Practices**

6 That, to every extent possible, it shall be the policy of
7 states party to this compact that no juvenile or delinquent
8 juvenile shall be placed or detained in any prison, jail or lockup
9 nor be detained or transported in association with criminal,
10 vicious or dissolute persons.

11 **Article X -- Supplementary Agreements**

12 That the duly constituted administrative authorities of a
13 state party to this compact may enter into supplementary agreements
14 with any other state or states party hereto for the cooperative
15 care, treatment and rehabilitation of delinquent juveniles whenever
16 they shall find that such agreements will improve the facilities or
17 programs available for such care, treatment and rehabilitation.
18 Such care, treatment and rehabilitation may be provided in an
19 institution located within any state entering into such
20 supplementary agreement. Such supplementary agreements shall: (1)
21 Provide the rates to be paid for the care, treatment and custody of
22 such delinquent juveniles, taking into consideration the character
23 of facilities, services and subsistence furnished; (2) provide that

1 the delinquent juvenile shall be given a court hearing prior to his
2 or her being sent to another state for care, treatment and custody;
3 (3) provide that the state receiving such a delinquent juvenile in
4 one of its institutions shall act solely as agent for the state
5 sending such delinquent juvenile; (4) provide that the sending
6 state shall at all times retain jurisdiction over delinquent
7 juveniles sent to an institution in another state; (5) provide for
8 reasonable inspection of such institutions by the sending state;
9 (6) provide that the consent of the parent, guardian, person or
10 agency entitled to the legal custody of said delinquent juvenile
11 shall be secured prior to his or her being sent to another state;
12 and (7) make provision for such other matters and details as shall
13 be necessary to protect the rights and equities of such delinquent
14 juveniles and of the cooperating states.

15 **Article XI -- Acceptance of Federal and Other Aid**

16 That any state party to this compact may accept any and all
17 donations, gifts and grants of money, equipment and services from
18 the federal or any local government, or any agency thereof and from
19 any person, firm or corporation, for any of the purposes and
20 functions of this compact, and may receive and utilize the same
21 subject to the terms, conditions and regulations governing such
22 donations, gifts and grants.

23 **Article XII -- Compact Administrators**

1 That the Governor of each state party to this compact shall
2 designate an officer who, acting jointly with like officers of
3 other party states, shall promulgate rules and regulations to carry
4 out more effectively the terms and provisions of this compact.

5 **Article XIII -- Execution of Compact**

6 That this compact shall become operative immediately upon its
7 execution by any state as between it and any other state or states
8 so executing. When executed it shall have the full force and
9 effect of law within such state, the form or execution to be in
10 accordance with the laws of the executing state.

11 **Article XIV -- Renunciation**

12 That this compact shall continue in force and remain binding
13 upon each executing state until renounced by it. Renunciation of
14 this compact shall be by the same authority which executed it, by
15 sending six months' notice in writing of its intention to withdraw
16 from the compact to the other states party hereto. The duties and
17 obligations of a renouncing state under article VII hereof shall
18 continue as to parolees and probationers residing therein at the
19 time of withdrawal until retaken or finally discharged.
20 Supplementary agreements entered into under article X hereof shall
21 be subject to renunciation as provided by such supplementary
22 agreements, and shall not be subject to the six months'
23 renunciation notice of the present article.

1 **Article XV -- Severability**

2 That the provisions of this compact shall be severable and if
3 any phrase, clause, sentence or provision of this compact is
4 declared to be contrary to the Constitution of any participating
5 state or of the United States or the applicability thereof to any
6 government, agency, person or circumstance is held invalid, the
7 validity of the remainder of this compact and the applicability
8 thereof to any government, agency, person or circumstances shall
9 not be affected thereby. If this compact shall be held contrary to
10 the Constitution of any state participating therein, the compact
11 shall remain in full force and effect as to the remaining states
12 and in full force and effect as to the state affected as to all
13 severable matters.

14 **§49-6-303. Execution of additional article.**

15 The Governor is further authorized and directed to
16 execute, with any other state or states legally joining in the
17 same, an additional article to said compact in the form
18 substantially as follows:

19 (1) That this article shall provide additional remedies, and
20 shall be binding only as among and between those party states which
21 specifically execute the same.

22 (2) For the purposes of this article, "child," as used herein,
23 means any minor within the jurisdictional age limits of any court

1 in the home state.

2 (3) When any child is brought before a court of a state of
3 which such child is not a resident, and such state is willing to
4 permit such child's return to the home state of such child, such
5 home state, upon being so advised by the state in which such
6 proceeding is pending, shall immediately institute proceedings to
7 determine the residence and jurisdictional facts as to such child
8 in such home state, and upon finding that such child is in fact a
9 resident of said state and subject to the jurisdiction of the court
10 thereof, shall within five days authorize the return of such child
11 to the home state, and to the parent or custodial agency legally
12 authorized to accept such custody in such home state, and at the
13 expense of such home state, to be paid from such funds as such home
14 state may procure, designate, or provide, prompt action being of
15 the essence.

16 **§49-6-304. Execution of amendment.**

17 The Governor is further authorized and directed to execute,
18 with any other state or states legally joining in the same, an
19 amendment to said compact in the form substantially as follows:

20 (1) This amendment shall provide additional remedies, and
21 shall be binding only as among and between those party states which
22 specifically execute the same.

23 (2) All provisions and procedures of articles V and VI of the

1 Interstate Compact on Juveniles shall be construed to apply to any
2 juvenile charged with being a delinquent by reason of a violation
3 of any criminal law. Any juvenile, charged with being a delinquent
4 by reason of violating any criminal law shall be returned to the
5 requesting state upon a requisition to the state where the juvenile
6 may be found. A petition in such case shall be filed in a court of
7 competent jurisdiction in the requesting state where the violation
8 of criminal law is alleged to have been committed. The petition
9 may be filed regardless of whether the juvenile has left the state
10 before or after the filing of the petition. The requisition
11 described in article V of the compact shall be forwarded by the
12 judge of the court in which the petition has been filed.

13 **§49-6-305. Juvenile compact administrator.**

14 Pursuant to said compact, the Governor is hereby authorized
15 and empowered to designate an officer who shall be the compact
16 administrator and who, acting jointly with like officers of other
17 party states, shall promulgate rules and regulations to carry out
18 more effectively the terms of the compact. Said compact
19 administrator shall serve subject to the will and pleasure of the
20 Governor. The compact administrator is hereby authorized,
21 empowered and directed to cooperate with all departments, agencies
22 and officers of and in the government of this state and its
23 subdivisions in facilitating the proper administration of the

1 compact or of any supplementary agreement or agreements entered
2 into by this state hereunder.

3 **§49-6-306. Supplementary agreements by administrator; use of**
4 **state institution or facility.**

5 The compact administrator is hereby authorized and empowered
6 to enter into supplementary agreements with appropriate officials
7 of other states pursuant to the compact. In the event that such
8 supplementary agreement shall require or contemplate the use of any
9 institution or facility of this state or require or contemplate the
10 provision of any service by this state, said supplementary
11 agreement shall have no force or effect until approved by the head
12 of the department or agency under whose jurisdiction said
13 institution or facility is operated or whose department or agency
14 will be charged with the rendering of such service.

15 **§49-6-307. Financial obligations of state under article.**

16 The compact administrator, subject to the approval of the
17 State Auditor, may make or arrange for any payments necessary to
18 discharge any financial obligations imposed upon this state by the
19 compact or by any supplementary agreement entered into thereunder.

20 **§49-6-308. Responsibilities of courts, state departments, agencies**
21 **and officers.**

22 The courts, departments, agencies and officers of this state

1 and its subdivisions shall enforce this compact and shall do all
2 things appropriate to the effectuation of its purposes and intent
3 which may be within their respective jurisdictions.

4 **§49-6-309. Additional procedures not precluded.**

5 In addition to any procedure provided in articles IV and VI of
6 the compact for the return of any runaway juvenile, the particular
7 states, the juvenile or his or her parents, the courts, or other
8 legal custodian involved may agree upon and adopt any other plan or
9 procedure legally authorized under the laws of this state and the
10 other respective party states for the return of any such runaway
11 juvenile.

12 **PART FOUR. THE INTERSTATE COMPACT FOR JUVENILES.**

13 **§49-6-401. Execution of interstate compact for juveniles.**

14 The Governor of this state is authorized and directed to
15 execute a compact on behalf of the State of West Virginia with any
16 state or states of the United States legally joining therein, and
17 substantially as follows:

18 **ARTICLE I. PURPOSE.**

19 (a) The compacting states to this interstate compact recognize
20 that each state is responsible for the proper supervision or return
21 of juveniles, delinquents and status offenders who are on probation
22 or parole and who have absconded, escaped or run away from
23 supervision and control and in so doing have endangered their own

1 safety and the safety of others. The compacting states also
2 recognize that each state is responsible for the safe return of
3 juveniles who have run away from home and in doing so have left
4 their state of residence. The compacting states also recognize
5 that Congress, by enacting the Crime Control Act, 4 U.S.C. Section
6 112 (1965), has authorized and encouraged compacts for cooperative
7 efforts and mutual assistance in the prevention of crime.

8 (b) It is the purpose of this compact, through means of joint
9 and cooperative action among the compacting states:

10 (1) To ensure that the adjudicated juveniles and status
11 offenders subject to this compact are provided adequate supervision
12 and services in the receiving state as ordered by the adjudicating
13 judge or parole authority in the sending state;

14 (2) To ensure that the public safety interests of the
15 citizens, including the victims of juvenile offenders, in both the
16 sending and receiving states are adequately protected;

17 (3) To return juveniles who have run away, absconded or
18 escaped from supervision or control or have been accused of an
19 offense to the state requesting their return;

20 (4) To make contracts for the cooperative institutionalization
21 in public facilities in member states for delinquent youth needing
22 special services;

23 (5) To provide for the effective tracking and supervision of

1 juveniles;

2 (6) To equitably allocate the costs, benefits and obligations
3 of the compacting states;

4 (7) To establish procedures to manage the movement between
5 states of juvenile offenders released to the community under the
6 jurisdiction of courts, juvenile departments, or any other criminal
7 or juvenile justice agency which has jurisdiction over juvenile
8 offenders;

9 (8) To ensure immediate notice to jurisdictions where defined
10 offenders are authorized to travel or to relocate across state
11 lines;

12 (9) To establish procedures to resolve pending charges
13 (detainers) against juvenile offenders prior to transfer or release
14 to the community under the terms of this compact;

15 (10) To establish a system of uniform data collection on
16 information pertaining to juveniles subject to this compact that
17 allows access by authorized juvenile justice and criminal justice
18 officials, and regular reporting of compact activities to heads of
19 state executive, judicial, and legislative branches and juvenile
20 and criminal justice administrators;

21 (11) To monitor compliance with rules governing interstate
22 movement of juveniles and initiate interventions to address and
23 correct noncompliance;

1 (12) To coordinate training and education regarding the
2 regulation of interstate movement of juveniles for officials
3 involved in such activity; and

4 (13) To coordinate the implementation and operation of the
5 compact with the interstate compact for the placement of children,
6 the interstate compact for adult offender supervision and other
7 compacts affecting juveniles, particularly in those cases where
8 concurrent or overlapping supervision issues arise.

9 (c) It is the policy of the compacting states that the
10 activities conducted by the interstate commission created herein
11 are the formation of public policies and therefore are public
12 business. Furthermore, the compacting states shall cooperate and
13 observe their individual and collective duties and responsibilities
14 for the prompt return and acceptance of juveniles subject to the
15 provisions of this compact. The provisions of this compact shall
16 be reasonably and liberally construed to accomplish the purposes
17 and policies of the compact.

18 **ARTICLE II. DEFINITIONS.**

19 As used in this compact, unless the context clearly requires
20 a different construction:

21 (a) "Bylaws" means those bylaws established by the interstate
22 commission for its governance, or for directing or controlling its
23 actions or conduct.

1 (b) "Compact administrator" means the individual in each
2 compacting state appointed pursuant to the terms of this compact,
3 responsible for the administration and management of the state's
4 supervision and transfer of juveniles subject to the terms of this
5 compact, the rules adopted by the interstate commission and
6 policies adopted by the state council under this compact.

7 (c) "Compacting state" means any state which has enacted the
8 enabling legislation for this compact.

9 (d) "Commissioner" means the voting representative of each
10 compacting state appointed pursuant to Article III of this compact.

11 (e) "Court" means any court having jurisdiction over
12 delinquent, neglected, or dependent children.

13 (f) "Deputy compact administrator" means the individual, if
14 any, in each compacting state appointed to act on behalf of a
15 compact administrator pursuant to the terms of this compact
16 responsible for the administration and management of the state's
17 supervision and transfer of juveniles subject to the terms of this
18 compact, the rules adopted by the interstate commission and
19 policies adopted by the state council under this compact.

20 (g) "Interstate commission" means the interstate commission
21 for juveniles created by Article III of this compact.

22 (h) "Juvenile" means any person defined as a juvenile in any
23 member state or by the rules of the interstate commission,

1 including:

2 (1) Accused delinquent - a person charged with an offense
3 that, if committed by an adult, would be a criminal offense;

4 (2) Adjudicated delinquent - a person found to have committed
5 an offense that, if committed by an adult, would be a criminal
6 offense;

7 (3) Accused status offender - a person charged with an offense
8 that would not be a criminal offense if committed by an adult;

9 (4) Adjudicated status offender - a person found to have
10 committed an offense that would not be a criminal offense if
11 committed by an adult; and

12 (i) Nonoffender - a person in need of supervision who has not
13 been accused or adjudicated a status offender or delinquent.

14 (j) "Noncompacting state" means any state which has not
15 enacted the enabling legislation for this compact.

16 (k) "Probation or parole" means any kind of supervision or
17 conditional release of juveniles authorized under the laws of the
18 compacting states.

19 (l) "Rule" means a written statement by the interstate
20 commission promulgated pursuant to Article VI of this compact that
21 is of general applicability, implements, interprets or prescribes
22 a policy or provision of the compact, or an organizational,
23 procedural, or practice requirement of the commission, and has the

1 force and effect of statutory law in a compacting state, and
2 includes the amendment, repeal, or suspension of an existing rule.

3 (m) "State" means a state of the United States, the District
4 of Columbia (or its designee), the Commonwealth of Puerto Rico, the
5 U.S. Virgin Islands, Guam, American Samoa, and the Northern
6 Marianas Islands.

7 **ARTICLE III. INTERSTATE COMMISSION FOR JUVENILES.**

8 (a) The compacting states hereby create the "Interstate
9 Commission for Juveniles." The commission shall be a body
10 corporate and joint agency of the compacting states. The
11 commission shall have all the responsibilities, powers and duties
12 set forth herein, and such additional powers as may be conferred
13 upon it by subsequent action of the respective Legislatures of the
14 compacting states in accordance with the terms of this compact.

15 (b) The interstate commission shall consist of commissioners
16 appointed by the appropriate appointing authority in each state
17 pursuant to the rules and requirements of each compacting state and
18 in consultation with the state council for interstate juvenile
19 supervision created hereunder. The commissioner shall be the
20 compact administrator, deputy compact administrator or designee
21 from that state who shall serve on the interstate commission in
22 such capacity under or pursuant to the applicable law of the
23 compacting state.

1 (c) In addition to the commissioners who are the voting
2 representatives of each state, the interstate commission shall
3 include individuals who are not commissioners, but who are members
4 of interested organizations. Such noncommissioner members must
5 include a member of the national organizations of Governors,
6 legislators, state chief justices, attorneys general, interstate
7 compact for adult offender supervision, interstate compact for the
8 placement of children, juvenile justice and juvenile corrections
9 officials, and crime victims. All noncommissioner members of the
10 interstate commission shall be ex officio (nonvoting) members. The
11 interstate commission may provide in its bylaws for such additional
12 ex officio (nonvoting) members, including members of other national
13 organizations, in such numbers as shall be determined by the
14 commission.

15 (d) Each compacting state represented at any meeting of the
16 commission is entitled to one vote. A majority of the compacting
17 states shall constitute a quorum for the transaction of business,
18 unless a larger quorum is required by the bylaws of the interstate
19 commission.

20 (e) The commission shall meet at least once each calendar
21 year. The chairperson may call additional meetings and, upon the
22 request of a simple majority of the compacting states, shall call
23 additional meetings. Public notice shall be given of all meetings

1 and meetings shall be open to the public.

2 (f) The interstate commission shall establish an executive
3 committee, which shall include commission officers, members, and
4 others as determined by the bylaws. The executive committee shall
5 have the power to act on behalf of the interstate commission during
6 periods when the interstate commission is not in session, with the
7 exception of rule making and/or amendment to the compact. The
8 executive committee shall oversee the day-to-day activities of the
9 administration of the compact managed by an executive director and
10 interstate commission staff; administers enforcement and compliance
11 with the provisions of the compact, its bylaws and rules, and
12 performs such other duties as directed by the interstate commission
13 or set forth in the bylaws.

14 (g) Each member of the interstate commission shall have the
15 right and power to cast a vote to which that compacting state is
16 entitled and to participate in the business and affairs of the
17 interstate commission. A member shall vote in person and shall not
18 delegate a vote to another compacting state. However, a
19 commissioner, in consultation with the state council, shall appoint
20 another authorized representative, in the absence of the
21 commissioner from that state, to cast a vote on behalf of the
22 compacting state at a specified meeting. The bylaws may provide
23 for members' participation in meetings by telephone or other means

1 of telecommunication or electronic communication.

2 (h) The interstate commission's bylaws shall establish
3 conditions and procedures under which the interstate commission
4 shall make its information and official records available to the
5 public for inspection or copying. The interstate commission may
6 exempt from disclosure any information or official records to the
7 extent they would adversely affect personal privacy rights or
8 proprietary interests.

9 (i) Public notice shall be given of all meetings and all
10 meetings shall be open to the public, except as set forth in the
11 rules or as otherwise provided in the compact. The interstate
12 commission and any of its committees may close a meeting to the
13 public where it determines by two-thirds vote that an open meeting
14 would be likely to:

15 (1) Relate solely to the interstate commission's internal
16 personnel practices and procedures;

17 (2) Disclose matters specifically exempted from disclosure by
18 statute;

19 (3) Disclose trade secrets or commercial or financial
20 information which is privileged or confidential;

21 (4) Involve accusing any person of a crime, or formally
22 censuring any person;

23 (5) Disclose information of a personal nature where disclosure

1 would constitute a clearly unwarranted invasion of personal
2 privacy;

3 (6) Disclose investigative records compiled for
4 law-enforcement purposes;

5 (7) Disclose information contained in or related to
6 examination, operating or condition reports prepared by, or on
7 behalf of or for the use of, the interstate commission with respect
8 to a regulated person or entity for the purpose of regulation or
9 supervision of such person or entity;

10 (8) Disclose information, the premature disclosure of which
11 would significantly endanger the stability of a regulated person or
12 entity; or

13 (9) Specifically relate to the interstate commission's
14 issuance of a subpoena, or its participation in a civil action or
15 other legal proceeding.

16 (j) For every meeting closed pursuant to subsection (i) of
17 this section, the interstate commission's legal counsel shall
18 publicly certify that, in the legal counsel's opinion, the meeting
19 may be closed to the public, and shall reference each relevant
20 exemptive provision. The interstate commission shall keep minutes
21 which shall fully and clearly describe all matters discussed in any
22 meeting and shall provide a full and accurate summary of any
23 actions taken, and the reasons therefore, including a description

1 of each of the views expressed on any item and the record of any
2 roll call vote (reflected in the vote of each member on the
3 question). All documents considered in connection with any action
4 shall be identified in such minutes.

5 (k) The interstate commission shall collect standardized data
6 concerning the interstate movement of juveniles as directed through
7 its rules which shall specify the data to be collected, the means
8 of collection and data exchange and reporting requirements. Such
9 methods of data collection, exchange and reporting shall insofar as
10 is reasonably possible conform to up-to-date technology and
11 coordinate its information functions with the appropriate
12 repository of records.

13 **ARTICLE IV. POWERS AND DUTIES OF THE INTERSTATE COMMISSION.**

14 The interstate commission shall have the following powers and
15 duties:

16 (a) To provide for dispute resolution among compacting states.

17 (b) To promulgate rules to effect the purposes and obligations
18 as enumerated in this compact, which shall have the force and
19 effect of statutory law and shall be binding in the compacting
20 states to the extent and in the manner provided in this compact.

21 (c) To oversee, supervise and coordinate the interstate
22 movement of juveniles subject to the terms of this compact and any
23 bylaws adopted and rules promulgated by the interstate commission.

1 (d) To enforce compliance with the compact provisions, the
2 rules promulgated by the interstate commission, and the bylaws,
3 using all necessary and proper means, including, but not limited
4 to, the use of judicial process.

5 (e) To establish and maintain offices which shall be located
6 within one or more of the compacting states.

7 (f) To purchase and maintain insurance and bonds.

8 (g) To borrow, accept, hire or contract for services of
9 personnel.

10 (h) To establish and appoint committees and hire staff which
11 it deems necessary for the carrying out of its functions including,
12 but not limited to, an executive committee as required by Article
13 III which shall have the power to act on behalf of the interstate
14 commission in carrying out its powers and duties hereunder.

15 (i) To elect or appoint such officers, attorneys, employees,
16 agents, or consultants, and to fix their compensation, define their
17 duties and determine their qualifications.

18 (j) To establish the interstate commission's personnel
19 policies and programs relating to, inter alia, conflicts of
20 interest, rates of compensation, and qualifications of personnel.

21 (k) To accept any and all donations and grants of money,
22 equipment, supplies, materials, and services, and to receive,
23 utilize, and dispose of it.

1 (l) To lease, purchase, accept contributions or donations of,
2 or otherwise to own, hold, improve or use any property, real,
3 personal, or mixed.

4 (m) To sell, convey, mortgage, pledge, lease, exchange,
5 abandon, or otherwise dispose of any property, real, personal or
6 mixed.

7 (n) To establish a budget and make expenditures and levy dues
8 as provided in Article VIII of this compact.

9 (o) To sue and be sued.

10 (p) To adopt a seal and bylaws governing the management and
11 operation of the interstate commission.

12 (q) To perform such functions as may be necessary or
13 appropriate to achieve the purposes of this compact.

14 (r) To report annually to the Legislatures, Governors,
15 judiciary, and state councils of the compacting states concerning
16 the activities of the interstate commission during the preceding
17 year. Such reports shall also include any recommendations that may
18 have been adopted by the interstate commission.

19 (s) To coordinate education, training and public awareness
20 regarding the interstate movement of juveniles for officials
21 involved in such activity.

22 (t) To establish uniform standards of the reporting,
23 collecting and exchanging of data.

1 (u) The interstate commission shall maintain its corporate
2 books and records in accordance with the bylaws.

3 **ARTICLE V. ORGANIZATION AND OPERATION**
4 **OF THE INTERSTATE COMMISSION.**

5 Section A. Bylaws.

6 (a) The interstate commission shall, by a majority of the
7 members present and voting, within twelve months after the first
8 interstate commission meeting, adopt bylaws to govern its conduct
9 as may be necessary or appropriate to carry out the purposes of the
10 compact, including, but not limited to:

11 (1) Establishing the fiscal year of the interstate commission;

12 (2) Establish an executive committee and such other committees
13 as may be necessary to;

14 (3) Provide for the establishment of committees governing any
15 general or specific delegation of any authority or function of the
16 interstate commission;

17 (4) Provide reasonable procedures for calling and conducting
18 meetings of the interstate commission, and ensure reasonable notice
19 of each such meeting;

20 (5) Establish the titles and responsibilities of the officers
21 of the interstate commission;

22 (6) Provide a mechanism for concluding the operations of the
23 interstate commission and the return of any surplus funds that may

1 exist upon the termination of the compact after the payment and/or
2 reserving of all of its debts and obligations.

3 (7) Providing "start-up" rules for initial administration of
4 the compact; and

5 (8) Establish standards and procedures for compliance and
6 technical assistance in carrying out the compact.

7 Section B. Officers and Staff.

8 (b) (1) The interstate commission shall, by a majority of the
9 members, elect annually from among its members a chairperson and a
10 vice chairperson, each of whom shall have such authority and duties
11 as may be specified in the bylaws. The chairperson or, in the
12 chairperson's absence or disability, the vice-chairperson shall
13 preside at all meetings of the interstate commission. The officers
14 so elected shall serve without compensation or remuneration from
15 the interstate commission; provided that, subject to the
16 availability of budgeted funds, the officers shall be reimbursed
17 for any ordinary and necessary costs and expenses incurred by them
18 in the performance of their duties and responsibilities as officers
19 of the interstate commission.

20 (2) The interstate commission shall, through its executive
21 committee, appoint or retain an executive director for such period,
22 upon such terms and conditions and for such compensation as the
23 interstate commission may deem appropriate. The executive director

1 shall serve as secretary to the interstate commission, but shall
2 not be a member and shall hire and supervise such other staff as
3 may be authorized by the interstate commission.

4 Section C. Qualified Immunity, Defense and Indemnification.

5 (c) (1) The commission's executive director and employees shall
6 be immune from suit and liability, either personally or in their
7 official capacity, for any claim for damage to or loss of property
8 or personal injury or other civil liability caused or arising out
9 of or relating to any actual or alleged act, error, or omission
10 that occurred, or that such person had a reasonable basis for
11 believing occurred within the scope of commission employment,
12 duties, or responsibilities; provided, that any such person shall
13 not be protected from suit or liability for any damage, loss,
14 injury, or liability caused by the intentional or willful and
15 wanton misconduct of any such person.

16 (2) The liability of any commissioner, or the employee or
17 agent of a commissioner, acting within the scope of such person's
18 employment or duties for acts, errors, or omissions occurring
19 within such person's state may not exceed the limits of liability
20 set forth under the Constitution and laws of that state for state
21 officials, employees, and agents. Nothing in this subsection shall
22 be construed to protect any such person from suit or liability for
23 any damage, loss, injury, or liability caused by the intentional or

1 willful and wanton misconduct of any such person.

2 (3) The interstate commission shall defend the executive
3 director or the employees or representatives of the interstate
4 commission and, subject to the approval of the Attorney General of
5 the state represented by any commissioner of a compacting state,
6 shall defend such commissioner or the commissioner's
7 representatives or employees in any civil action seeking to impose
8 liability arising out of any actual or alleged act, error or
9 omission that occurred within the scope of interstate commission
10 employment, duties or responsibilities, or that the defendant had
11 a reasonable basis for believing occurred within the scope of
12 interstate commission employment, duties, or responsibilities,
13 provided that the actual or alleged act, error, or omission did not
14 result from intentional or willful and wanton misconduct on the
15 part of such person.

16 (4) The interstate commission shall indemnify and hold the
17 commissioner of a compacting state, or the commissioner's
18 representatives or employees, or the interstate commission's
19 representatives or employees, harmless in the amount of any
20 settlement or judgment obtained against such persons arising out of
21 any actual or alleged act, error, or omission that occurred within
22 the scope of interstate commission employment, duties, or
23 responsibilities, or that such persons had a reasonable basis for

1 believing occurred within the scope of interstate commission
2 employment, duties, or responsibilities, provided that the actual
3 or alleged act, error, or omission did not result from intentional
4 or willful and wanton misconduct on the part of such persons.

5 **ARTICLE VI. RULE-MAKING FUNCTIONS**

6 **OF THE INTERSTATE COMMISSION.**

7 (a) The interstate commission shall promulgate and publish
8 rules in order to effectively and efficiently achieve the purposes
9 of the compact.

10 (b) Rule making shall occur pursuant to the criteria set forth
11 in this article and the bylaws and rules adopted pursuant thereto.
12 Such rule making shall substantially conform to the principles of
13 the "Model State Administrative Procedures Act," 1981 Act, Uniform
14 Laws Annotated, Vol. 15, p.1 (2000), or such other administrative
15 procedures act, as the interstate commission deems appropriate
16 consistent with due process requirements under the U.S.
17 Constitution as now or hereafter interpreted by the U.S. Supreme
18 Court. All rules and amendments shall become binding as of the
19 date specified, as published with the final version of the rule as
20 approved by the commission.

21 (c) When promulgating a rule, the interstate commission shall,
22 at a minimum:

23 (1) Publish the proposed rule's entire text stating the

1 reason(s) for that proposed rule;

2 (2) Allow and invite any and all persons to submit written
3 data, facts, opinions and arguments, which information shall be
4 added to the record, and be made publicly available;

5 (3) Provide an opportunity for an informal hearing if
6 petitioned by ten (10) or more persons; and

7 (4) Promulgate a final rule and its effective date, if
8 appropriate, based on input from state or local officials, or
9 interested parties.

10 (d) Allow, not later than sixty days after a rule is
11 promulgated, any interested person to file a petition in the United
12 States District Court for the District of Columbia or in the
13 federal district court where the interstate commission's principal
14 office is located for judicial review of such rule. If the court
15 finds that the interstate commission's action is not supported by
16 substantial evidence in the rule-making record, the court shall
17 hold the rule unlawful and set it aside. For purposes of this
18 subsection, evidence is substantial if it would be considered
19 substantial evidence under the Model State Administrative
20 Procedures Act.

21 (e) If a majority of the Legislatures of the compacting states
22 rejects a rule, those states may, by enactment of a statute or
23 resolution in the same manner used to adopt the compact, cause that

1 such rule shall have no further force and effect in any compacting
2 state.

3 (f) The existing rules governing the operation of the
4 "Interstate Compact on Juveniles" superceded by this article shall
5 be null and void twelve months after the first meeting of the
6 interstate commission created hereunder.

7 (g) Upon determination by the interstate commission that a
8 state-of-emergency exists, it may promulgate an emergency rule
9 which shall become effective immediately upon adoption, provided
10 that the usual rule-making procedures provided hereunder shall be
11 retroactively applied to said rule as soon as reasonably possible,
12 but no later than ninety days after the effective date of the
13 emergency rule.

14 **ARTICLE VII. OVERSIGHT, ENFORCEMENT AND DISPUTE SOLUTION**

15 **BY THE INTERSTATE COMMISSION.**

16 Section A. Oversight.

17 (a) (1) The interstate commission shall oversee the
18 administration and operations of the interstate movement of
19 juveniles subject to this compact in the compacting states and
20 shall monitor such activities being administered in noncompacting
21 states which may significantly affect compacting states.

22 (2) The courts and executive agencies in each compacting state
23 shall enforce this compact and shall take all actions necessary and

1 appropriate to effectuate the compact's purposes and intent.

2 (3) The provisions of this compact and the rules promulgated
3 hereunder shall be received by all the judges, public officers,
4 commissions, and departments of the state government as evidence of
5 the authorized statute and administrative rules. All courts shall
6 take judicial notice of the compact and the rules.

7 (4) In any judicial or administrative proceeding in a
8 compacting state pertaining to the subject matter of this compact
9 which may affect the powers, responsibilities or actions of the
10 interstate commission, it shall be entitled to receive all service
11 of process in any such proceeding, and shall have standing to
12 intervene in the proceeding for all purposes.

13 Section B. Dispute Resolution.

14 (b) (1) The compacting states shall report to the interstate
15 commission on all issues and activities necessary for the
16 administration of the compact as well as issues and activities
17 pertaining to compliance with the provisions of the compact and its
18 bylaws and rules.

19 (2) The interstate commission shall attempt, upon the request
20 of a compacting state, to resolve any disputes or other issues
21 which are subject to the compact and which may arise among
22 compacting states and between compacting and noncompacting states.
23 The commission shall promulgate a rule providing for both mediation

1 and binding dispute resolution for disputes among the compacting
2 states.

3 (3) The interstate commission, in the reasonable exercise of
4 its discretion, shall enforce the provisions and rules of this
5 compact using any or all means set forth in Article XI of this
6 compact.

7 **ARTICLE VIII. FINANCE.**

8 (a) The interstate commission shall pay or provide for the
9 payment of the reasonable expenses of its establishment,
10 organization and ongoing activities.

11 (b) The interstate commission shall levy on and collect an
12 annual assessment from each compacting state to cover the cost of
13 the internal operations and activities of the interstate commission
14 and its staff which must be in a total amount sufficient to cover
15 the interstate commission's annual budget as approved each year.
16 The aggregate annual assessment amount shall be allocated based
17 upon a formula to be determined by the interstate commission,
18 taking into consideration the population of each compacting state
19 and the volume of interstate movement of juveniles in each
20 compacting state and shall promulgate a rule binding upon all
21 compacting states which governs said assessment.

22 (c) The interstate commission shall not incur any obligations
23 of any kind prior to securing the funds adequate to meet the same;

1 nor shall the interstate commission pledge the credit of any of the
2 compacting states, except by and with the authority of the
3 compacting state.

4 (d) The interstate commission shall keep accurate accounts of
5 all receipts and disbursements. The receipts and disbursements of
6 the interstate commission shall be subject to the audit and
7 accounting procedures established under its bylaws. However, all
8 receipts and disbursements of funds handled by the interstate
9 commission shall be audited yearly by a certified or licensed
10 public accountant and the report of the audit shall be included in
11 and become part of the annual report of the interstate commission.

12 **ARTICLE IX. THE STATE COUNCIL.**

13 Each member state shall create a state council for interstate
14 juvenile supervision. While each state may determine the
15 membership of its own state council, its membership must include at
16 least one representative from the legislative, judicial, and
17 executive branches of government, victims groups, and the compact
18 administrator, deputy compact administrator or designee. Each
19 compacting state retains the right to determine the qualifications
20 of the compact administrator or deputy compact administrator. Each
21 state council will advise and may exercise oversight and advocacy
22 concerning that state's participation in interstate commission
23 activities and other duties as may be determined by that state,

1 including, but not limited to, development of policy concerning
2 operations and procedures of the compact within that state.

3 **ARTICLE X. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT.**

4 (a) Any state, the District of Columbia (or its designee), the
5 Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam,
6 American Samoa, and the Northern Marianas Islands as defined in
7 Article II of this compact is eligible to become a compacting
8 state.

9 (b) The compact shall become effective and binding upon
10 legislative enactment of the compact into law by no less than
11 thirty-five of the states. The initial effective date shall be the
12 later of July 1, 2004, or upon enactment into law by the
13 thirty-fifth jurisdiction. Thereafter it shall become effective
14 and binding as to any other compacting state upon enactment of the
15 compact into law by that state. The Governors of nonmember states
16 or their designees shall be invited to participate in the
17 activities of the interstate commission on a nonvoting basis prior
18 to adoption of the compact by all states and territories of the
19 United States.

20 (c) The interstate commission may propose amendments to the
21 compact for enactment by the compacting states. No amendment shall
22 become effective and binding upon the interstate commission and the
23 compacting states unless and until it is enacted into law by

1 unanimous consent of the compacting states.

2 **ARTICLE XI. WITHDRAWAL, DEFAULT, TERMINATION**

3 **AND JUDICIAL ENFORCEMENT.**

4 Section A. Withdrawal.

5 (a) (1) Once effective, the compact shall continue in force and
6 remain binding upon each and every compacting state; provided that
7 a compacting state may withdraw from the compact by specifically
8 repealing the statute which enacted the compact into law.

9 (2) The effective date of withdrawal is the effective date of
10 the repeal.

11 (3) The withdrawing state shall immediately notify the
12 chairperson of the interstate commission in writing upon the
13 introduction of legislation repealing this compact in the
14 withdrawing state. The interstate commission shall notify the
15 other compacting states of the withdrawing state's intent to
16 withdraw within sixty days of its receipt thereof.

17 (4) The withdrawing state is responsible for all assessments,
18 obligations and liabilities incurred through the effective date of
19 withdrawal, including any obligations, the performance of which
20 extend beyond the effective date of withdrawal.

21 (5) Reinstatement following withdrawal of any compacting state
22 shall occur upon the withdrawing state reenacting the compact or
23 upon such later date as determined by the interstate commission.

1 Section B. Technical Assistance, Fines,
2 Suspension, Termination and Default.

3 (b)(1) If the interstate commission determines that any
4 compacting state has at any time defaulted in the performance of
5 any of its obligations or responsibilities under this compact, or
6 the bylaws or duly promulgated rules, the interstate commission may
7 impose any or all of the following penalties:

8 (A) Remedial training and technical assistance as directed by
9 the interstate commission;

10 (B) Alternative dispute resolution;

11 (C) Fines, fees, and costs in such amounts as are deemed to be
12 reasonable as fixed by the interstate commission; and

13 (D) Suspension or termination of membership in the compact.

14 Suspension or termination of membership in the compact shall be
15 imposed only after all other reasonable means of securing
16 compliance under the bylaws and rules have been exhausted and the
17 interstate commission has therefore determined that the offending
18 state is in default. Immediate notice of suspension shall be given
19 by the interstate commission to the Governor, the chief justice or
20 the chief judicial officer of the state, the majority and minority
21 leaders of the defaulting state's Legislature, and the state
22 council.

23 (2) The grounds for default include, but are not limited to,

1 failure of a compacting state to perform such obligations or
2 responsibilities imposed upon it by this compact, the bylaws, or
3 duly promulgated rules and any other grounds designated in
4 commission bylaws and rules.

5 (3) The interstate commission shall immediately notify the
6 defaulting state in writing of the penalty imposed by the
7 interstate commission and of the default pending a cure of the
8 default.

9 (4) The commission shall stipulate the conditions and the time
10 period within which the defaulting state must cure its default. If
11 the defaulting state fails to cure the default within the time
12 period specified by the commission, the defaulting state shall be
13 terminated from the compact upon an affirmative vote of a majority
14 of the compacting states and all rights, privileges and benefits
15 conferred by this compact shall be terminated from the effective
16 date of termination.

17 (5) Within sixty days of the effective date of termination of
18 a defaulting state, the commission shall notify the Governor, the
19 chief justice or chief judicial officer, the majority and minority
20 leaders of the defaulting state's Legislature, and the state
21 council of such termination.

22 (6) The defaulting state is responsible for all assessments,
23 obligations and liabilities incurred through the effective date of

1 termination including any obligations, the performance of which
2 extends beyond the effective date of termination.

3 (7) The interstate commission shall not bear any costs
4 relating to the defaulting state unless otherwise mutually agreed
5 upon in writing between the interstate commission and the
6 defaulting state.

7 (8) Reinstatement following termination of any compacting
8 state requires both a reenactment of the compact by the defaulting
9 state and the approval of the interstate commission pursuant to the
10 rules.

11 Section C. Judicial Enforcement.

12 (c) The interstate commission may, by majority vote of the
13 members, initiate legal action in the United States District Court
14 for the District of Columbia or, at the discretion of the
15 interstate commission, in the federal district where the interstate
16 commission has its offices, to enforce compliance with the
17 provisions of the compact, its duly promulgated rules and bylaws,
18 against any compacting state in default. In the event judicial
19 enforcement is necessary the prevailing party shall be awarded all
20 costs of such litigation including reasonable attorneys fees.

21 Section D. Dissolution of Compact.

22 (d) (1) The compact dissolves effective upon the date of the
23 withdrawal or default of the compacting state, which reduces

1 membership in the compact to one compacting state.

2 (2) Upon the dissolution of this compact, the compact becomes
3 null and void and shall be of no further force or effect, and the
4 business and affairs of the interstate commission shall be
5 concluded and any surplus funds shall be distributed in accordance
6 with the bylaws.

7 **ARTICLE XII. SEVERABILITY AND CONSTRUCTION.**

8 (a) The provisions of this compact shall be severable, and if
9 any phrase, clause, sentence or provision is deemed unenforceable,
10 the remaining provisions of the compact shall be enforceable.

11 (b) The provisions of this compact shall be liberally
12 construed to effectuate its purposes.

13 **ARTICLE XIII. BINDING EFFECT OF COMPACT AND OTHER LAWS.**

14 Section A. Other Laws.

15 (a) (1) Nothing herein prevents the enforcement of any other
16 law of a compacting state that is not inconsistent with this
17 compact.

18 (2) All compacting states' laws other than state Constitutions
19 and other interstate compacts conflicting with this compact are
20 superseded to the extent of the conflict.

21 Section B. Binding Effect of the Compact.

22 (b) (1) All lawful actions of the interstate commission,
23 including all rules and bylaws promulgated by the interstate

1 commission, are binding upon the compacting states.

2 (2) All agreements between the interstate commission and the
3 compacting states are binding in accordance with their terms.

4 (3) Upon the request of a party to a conflict over meaning or
5 interpretation of interstate commission actions, and upon a
6 majority vote of the compacting states, the interstate commission
7 may issue advisory opinions regarding such meaning or
8 interpretation.

9 (4) In the event any provision of this compact exceeds the
10 constitutional limits imposed on the Legislature of any compacting
11 state, the obligations, duties, powers or jurisdiction sought to be
12 conferred by such provision upon the interstate commission shall be
13 ineffective and such obligations, duties, powers or jurisdiction
14 shall remain in the compacting state and shall be exercised by the
15 agency thereof to which such obligations, duties, powers or
16 jurisdiction are delegated by law in effect at the time this
17 compact becomes effective.

18 **§49-6-402. State council for interstate juvenile supervision.**

19 (a) Upon the effective date of the interstate compact for
20 juveniles, there shall be created a state council for interstate
21 juvenile supervision. Said state council shall be comprised of a
22 total of nine members, to be selected and designated as follows:

23 (1) Two members designated by the Legislature, one of whom

1 shall be named and appointed by the Speaker of the House, and the
2 other of whom shall be designated by the President of the Senate;

3 (2) Two members designated by the judiciary, both of whom
4 shall be named and appointed by the Chief Justice of the Supreme
5 Court of Appeals of West Virginia;

6 (3) The compact administrator or a designee of the compact
7 administrator; and

8 (4) Four members to be designated and appointed by the
9 Governor, two of whom must be representatives of state agencies
10 dealing with juvenile corrections, juvenile placement or juvenile
11 services, and one of whom must be a representative of a victims'
12 group.

13 (b) Within ninety days of the effective date of this compact,
14 the state council shall meet and designate a commissioner who shall
15 represent the state as the compacting state's voting representative
16 under Article III of this compact.

17 (c) The state council will exercise oversight and advocacy
18 concerning West Virginia's participation in interstate commission
19 activities and rule makings, and engage in other duties and
20 activities as determined by its members, including, but not limited
21 to, the development of policy concerning the operations and
22 procedures for implementing the compact and interstate commission
23 rules within West Virginia.

1 **§49-6-403. Appointment of compact administrator.**

2 (a) Upon and after the effective date of the interstate
3 compact for juveniles, the Governor is hereby authorized and
4 empowered to designate an officer who shall be the compact
5 administrator and who, acting jointly with like offices of the
6 other party states, shall be responsible for the administration and
7 management of this state's supervision and transfer of juveniles
8 subject to the terms of this compact, the rules adopted by the
9 interstate commission and the policies adopted by the state council
10 under this compact. Said compact administrator shall serve subject
11 to the will and pleasure of the Governor, and must meet the minimum
12 qualifications for the position of compact administrator, as
13 established by the state council. The compact administrator is
14 hereby authorized, empowered and directed to cooperate with all
15 departments, agencies and officers of and in the government of this
16 state and its subdivisions in facilitating the proper
17 administration of the compact or of any supplementary agreement or
18 agreements entered into by this state hereunder.

19 (b) Until such time as the state council has met and
20 established minimum qualifications for the position of compact
21 administrator the individual or administrator who has been
22 designated to act as the juvenile compact administrator for the
23 interstate compact on juveniles may perform the duties and

1 responsibilities of compact administrator under this article.

2 (c) Until such time as the state council has met and
3 designated a commissioner to vote on behalf of the State of West
4 Virginia at the interstate commission, the individual or
5 administrator who has been designated to act as the juvenile
6 compact administrator for the interstate compact on juveniles shall
7 function as the acting commissioner for the State of West Virginia
8 before the interstate commission formed under the new compact.

9 **§49-6-404. Notification of the effective date of the interstate**
10 **compact for juveniles.**

11 Within ten days of the date that the thirty-fifth state adopts
12 legislation approving this compact, the appointed or designated
13 juvenile compact administrator under section three, article eight
14 of this chapter shall advise the Governor, the Chief Justice of the
15 Supreme Court of Appeals of West Virginia, the Speaker of the House
16 of Delegates and the President of the Senate of the effective date
17 of this compact.

18 **ARTICLE 7. DIVISION OF JUVENILE SERVICES.**

19 **§49-7-101. Policy.**

20 (a) It is the policy of the state to:

21 (1) Provide a coordinated continuum of care for its children
22 who have been charged with an offense which would be a crime if
23 committed by an adult, whether they are taken into custody and

1 securely detained or released pending adjudication by the court;
2 and

3 (2) Ensure the safe and efficient custody of a securely
4 detained child through the entire juvenile justice process, and
5 this can best be accomplished by the state by providing for
6 cooperation and coordination between the agencies of government
7 which are charged with responsibilities for the children of the
8 state.

9 (b) When any juvenile is ordered by the court to be
10 transferred from the custody of one of these agencies into the
11 custody of the other, the Department of Health and Human Resources
12 and the Division of Juvenile Services shall cooperate with each
13 other to the maximum extent necessary in order to ease the child's
14 transition and to reduce unnecessary cost, duplication and delay.

15 **§49-7-102. Division created; transfer of functions; employment**
16 **of comprehensive strategy.**

17 (a) The Division of Juvenile Services is created within the
18 Department of Military Affairs and Public Safety. The director
19 shall be appointed by the Governor with the advice and consent of
20 the Senate and shall be responsible for the control and supervision
21 of each of its offices. The director may appoint deputy directors
22 and assign them duties as may be necessary for the efficient
23 management and operation of the division.

1 (b) The Division of Juvenile Services shall consist at a
2 minimum of three subdivisions:

3 (1) The Office of Juvenile Detention, which shall assume
4 responsibility for operating and maintaining centers for the
5 predispositional detention of juveniles, including juveniles who
6 have been transferred to adult criminal jurisdiction under section
7 ten, article eight of this chapter and juveniles who are awaiting
8 transfer to a juvenile corrections facility;

9 (2) The Office of Juvenile Corrections, which shall assume
10 responsibility for operating and maintaining juvenile corrections
11 facilities; and

12 (3) The Office of Youth Reporting Centers, which shall provide
13 at a minimum, masters level therapy services; family, individual
14 and group counseling; community service activities; transportation;
15 and, aftercare programs.

16 (c) Notwithstanding any provisions of this code to the
17 contrary, whenever a juvenile is ordered into the custody of the
18 Division of Juvenile Services, the director shall have the
19 authority to place the juvenile while he or she is in the
20 division's custody at whichever facility operated by the division
21 is deemed by the director to be most appropriate considering the
22 juvenile's well-being and any recommendations of the court placing
23 the juvenile in the division's custody.

1 §49-7-103. Powers and duties; employment of comprehensive
2 strategy.

3 The Division of Juvenile Services shall have the following
4 duties as to juveniles in detention facilities or juvenile
5 corrections facilities:

6 (1) Cooperating with the United States Department of Justice
7 in operating, maintaining and improving juvenile correction
8 facilities and predispositional detention centers, complying with
9 regulations thereof, and receiving and expending federal funds for
10 the services;

11 (2) Providing care for children needing secure detention
12 pending disposition by a court having juvenile jurisdiction or
13 temporary care following such court action;

14 (3) Assigning the necessary personnel and providing adequate
15 space for the support and operation of any facility providing for
16 the secure detention of children committed to the care of the
17 division of juvenile services;

18 (4) Proposing rules which outline policies and procedures
19 governing the operation of correctional, detention and other
20 facilities in its division wherein juveniles may be securely
21 housed;

22 (5) Assigning the necessary personnel and providing adequate
23 space for the support and operation of its facilities;

1 (6) Developing a comprehensive plan to maintain and improve a
2 unified state system of regional predispositional detention centers
3 for juveniles;

4 (7) Working in cooperation with the Department of Health and
5 Human Resources in establishing, maintaining, and continuously
6 refining and developing a balanced and comprehensive state program
7 for children who have been adjudicated delinquent;

8 (8) In cooperation with the Department of Health and Human
9 Resources establishing programs and services within available
10 funds, designed to:

11 (A) Prevent juvenile delinquency;

12 (B) To divert juveniles from the juvenile justice system:

13 (C) To provide community-based alternatives to juvenile
14 detention and correctional facilities; and

15 (D) To encourage a diversity of alternatives within the
16 juvenile justice system;

17 Working in collaboration with the Department of Health and
18 Human Resources, the Division of Juvenile Services shall employ a
19 comprehensive strategy for the social and rehabilitative
20 programming and treatment of juveniles, consistent with the
21 principles adopted by the Office of Juvenile Justice and
22 Delinquency Prevention of the Office of Justice Programs of the
23 United States Department of Justice.

1 **§49-7-104. Rules for specialized training for juvenile**
2 **corrections officers and detention center**
3 **employees.**

4 The Division of Juvenile Services shall propose
5 rules for Legislative approval pursuant to chapter twenty-nine-a of
6 this code, which require juvenile corrections officers and
7 detention center employees to complete specialized training and
8 certification. The training programs shall meet the standards of
9 those offered or endorsed by the Office of Juvenile Justice and
10 Delinquency Prevention of the Office of Justice Programs of the
11 United States Department of Justice.

12 **§49-7-105. Juvenile detention and corrections facilities;**
13 **employees; priority of hiring.**

14 (a) Notwithstanding any provision of this code to the
15 contrary, the division, when employing any persons to complete the
16 approved staffing plan of any of its juvenile detention or
17 corrections facilities, shall employ any person otherwise qualified
18 who applies for a position at the juvenile detention or corrections
19 facility who was also employed in good standing at a county or
20 local jail facility, at the time of its closing, that was closed
21 due to the completion of a regional jail.

22 (b) All persons employed at a juvenile detention or

1 corrections facility shall be employed at a salary and with
2 benefits consistent with the approved plan of compensation of the
3 Division of Personnel, created under section five, article six,
4 chapter twenty-nine of this code; all employees shall also be
5 covered by the policies and procedures of the West Virginia Public
6 Employees Grievance Board, created under article two, chapter six-c
7 of this code and the classified service protection policies of the
8 Division of Personnel.

9 (c) The Division of Juvenile Services of the Department of
10 Military Affairs and Public Safety is authorized to assign the
11 necessary personnel and provide adequate space for the support and
12 operation of any facility operated by the Division of Juvenile
13 Services of the Department of Military Affairs and Public Safety
14 providing for the detention of children as provided in this
15 article, subject to and not inconsistent with the appropriation and
16 availability of funds.

17 **§49-7-106. Medical and other treatment of juveniles in custody of**
18 **the division; coordination of care and claims**
19 **processing and administration by the department;**
20 **authorization of certain cooperative agreements.**

21 (a) Notwithstanding any other provision of law to the
22 contrary, the director, or his or her designee, is hereby
23 authorized to consent to the medical or other treatment of any

1 juvenile in the legal or physical custody of the director or the
2 division.

3 (b) In providing or arranging for the necessary medical and
4 other care and treatment of juveniles committed to the division's
5 custody, the director shall utilize service providers who provide
6 the same or similar services to juveniles under existing contracts
7 with the Department of Health and Human Resources. In order to
8 obtain the most advantageous reimbursement rates, to capitalize on
9 an economy of scale and to avoid duplicative systems and
10 procedures, the department shall administer and process all claims
11 for medical or other treatment of juveniles committed to the
12 division's custody.

13 (c) In providing or arranging for the necessary medical and
14 other care and treatment of juveniles committed to the division's
15 custody, the director shall assure that pregnant inmates will not
16 be restrained after reaching the second trimester of pregnancy
17 until the end of the pregnancy: *Provided*, That if the inmate, based
18 upon her classification, discipline history or other factors deemed
19 relevant by the director poses a threat of escape, or to the safety
20 of herself, the public, staff, or the unborn child, the inmate may
21 be restrained in a manner reasonably necessary: *Provided, however*,
22 That prior to directing the application of restraints and where
23 there is no threat to the safety of the inmate, the public, staff

1 or the fetus, the director or designee shall consult with an
2 appropriate health care professional to assure that the manner of
3 restraint will not pose an unreasonable risk of harm to the inmate
4 or the fetus.

5 (d) For purposes of implementing the mandates of this section,
6 the director is hereby authorized and directed to enter into any
7 necessary agreements with the Department of Health and Human
8 Resources. Any such agreement shall specify, at a minimum, for the
9 direct and incidental costs associated with such care and treatment
10 to be paid by the Division of Juvenile Services.

11 **§49-7-107. Provision of educational services for juveniles placed**
12 **in predispositional and postdispositional facilities.**

13 (a) The State Board of Education is authorized to provide for
14 adequate and appropriate education opportunities for juveniles
15 placed in secure predispositional or post dispositional centers
16 operated by or under contract with the Division of Juvenile
17 Services.

18 (b) Subject to appropriations by the Legislature, the state
19 board is authorized:

20 (1) To provide education programs and services for juveniles
21 on the grounds of secure predispositional or postdispositional
22 centers;

23 (2) To hire classroom teachers and other school personnel

1 necessary to provide adequate and appropriate education
2 opportunities to these juveniles, and

3 (3) To provide education services for the detained juveniles
4 on a twelve-month basis.

5 (c) The Division of Juvenile Services shall cooperate with the
6 state board and the state superintendent in the establishment and
7 maintenance of education programs authorized under this section.
8 Subject to appropriations by the Legislature, the Division of
9 Juvenile Services shall provide, or cause to be provided, adequate
10 space and facilities for the education programs. The state board
11 may not be required to construct, improve or maintain any building,
12 other improvement to real estate or fixtures attached thereto at
13 any secure predispositional detention center for the purpose of
14 establishing and maintaining an education program.

15 (d) The state board may develop and approve rules in
16 accordance with article three-a, chapter twenty-nine-a of this code
17 for the education of juveniles in secure predispositional detention
18 centers.

19 **§49-7-108. Arrest authority of juvenile correctional and detention**
20 **officers.**

21 (a) Persons employed by the Division of Juvenile Services as
22 juvenile correctional officers are authorized and empowered to
23 arrest persons already in the custody of the Division of Juvenile

1 Services for violations of law that occur in the officer's
2 presence, including escape.

3 (b) Nothing in this section shall be construed as to make a
4 juvenile correctional officer employed by the Division of Juvenile
5 Services a law-enforcement officer as defined in section one,
6 article twenty-nine, chapter thirty of this code.

7 **ARTICLE 8. JUVENILE PROCEEDINGS.**

8 **§49-8-101. Juvenile jurisdiction of circuit courts, magistrate**
9 **courts and municipal courts; constitutional**
10 **guarantees; hearings; evidence and transcripts.**

11 (a) The circuit court has original jurisdiction of proceedings
12 brought under this article.

13 (b) If during a criminal proceeding in any court it is
14 ascertained or appears that the defendant is under the age of
15 nineteen years and was under the age of eighteen years at the time
16 of the alleged offense, the matter shall be immediately certified
17 to the juvenile jurisdiction of the circuit court. The circuit
18 court shall assume jurisdiction of the case in the same manner as
19 cases which are originally instituted in the circuit court by
20 petition.

21 (c) Notwithstanding any other provision of this article,
22 magistrate courts have concurrent juvenile jurisdiction with the
23 circuit court for a violation of a traffic law of West Virginia,

1 for a violation of section nine, article six, chapter sixty,
2 section three or section four, article nine-a, chapter sixteen, or
3 section nineteen, article sixteen, chapter eleven of this code, or
4 for any violation of chapter twenty of this code. Juveniles are
5 liable for punishment for violations of these laws in the same
6 manner as adults except that magistrate courts have no jurisdiction
7 to impose a sentence of incarceration for the violation of these
8 laws.

9 (d) Notwithstanding any other provision of this article,
10 municipal courts have concurrent juvenile jurisdiction with the
11 circuit court for a violation of any municipal ordinance regulating
12 traffic, for any municipal curfew ordinance which is enforceable or
13 for any municipal ordinance regulating or prohibiting public
14 intoxication, drinking or possessing alcoholic liquor or
15 nonintoxicating beer in public places, any other act prohibited by
16 section nine, article six, chapter sixty or section nineteen,
17 article sixteen, chapter eleven of this code or underage possession
18 or use of tobacco or tobacco products, as provided in article
19 nine-a, chapter sixteen of this code. Municipal courts may impose
20 the same punishment for these violations as a circuit court
21 exercising its juvenile jurisdiction could properly impose, except
22 that municipal courts have no jurisdiction to impose a sentence of
23 incarceration for the violation of these laws.

1 (e) A juvenile may be brought before the circuit court for
2 proceedings under this article only by the following means:

3 (1) By a juvenile petition requesting that the juvenile be
4 adjudicated as a status offender or a juvenile delinquent; or

5 (2) By certification or transfer to the juvenile jurisdiction
6 of the circuit court from the criminal jurisdiction of the circuit
7 court, from any foreign court, or from any magistrate court or
8 municipal court in West Virginia.

9 (f) (1) If a juvenile commits an act which would be a crime if
10 committed by an adult, and the juvenile is adjudicated delinquent
11 for that act, the jurisdiction of the court which adjudged the
12 juvenile delinquent continues until the juvenile becomes twenty-one
13 years of age. The court has the same power over that person that it
14 had before he or she became an adult, and has the power to sentence
15 that person to a term of incarceration. Any term of incarceration
16 may not exceed six months. This authority does not preclude the
17 court from exercising criminal jurisdiction over that person if he
18 or she violates the law after becoming an adult or if the
19 proceedings have been transferred to the court's criminal
20 jurisdiction pursuant to section one hundred nine of this article.

21 (2) If a juvenile is adjudicated as a status offender because
22 he or she is habitually absent from school without good cause, the
23 jurisdiction of the court which adjudged the juvenile a status

1 offender continues until either the juvenile becomes twenty-one
2 years of age, completes high school, completes a high school
3 equivalent or other education plan approved by the court, or the
4 court otherwise voluntarily relinquishes jurisdiction, whichever
5 occurs first. If the jurisdiction of the court is extended pursuant
6 to this subdivision, the court has the same power over that person
7 that it had before he or she became an adult. No person so
8 adjudicated who has attained the age of nineteen may be ordered to
9 attend school in a regular, nonalternative setting.

10 (g) A juvenile is entitled to be admitted to bail or
11 recognizance in the same manner as an adult and shall be afforded
12 the protection guaranteed by Article III of the West Virginia
13 Constitution.

14 (h) A juvenile has the right to be effectively represented by
15 counsel at all stages of proceedings under this article, including
16 participation in multidisciplinary team meetings, until the child
17 is no longer under the jurisdiction of the court. If the juvenile
18 or the juvenile's parent or custodian executes an affidavit showing
19 that the juvenile cannot afford an attorney, the court shall
20 appoint an attorney, who shall be paid in accordance with article
21 twenty-one, chapter twenty-nine of this code.

22 (i) (1) In all proceedings under this article, the juvenile
23 shall be afforded a meaningful opportunity to be heard. This

1 includes the opportunity to testify and to present and
2 cross-examine witnesses. The general public shall be excluded from
3 all proceedings under this article except that persons whose
4 presence is requested by the parties and other persons whom the
5 circuit court determines have a legitimate interest in the
6 proceedings may attend.

7 (2) In cases in which a juvenile is accused of committing what
8 would be a felony if the juvenile were an adult, an alleged victim
9 or his or her representative may attend any related juvenile
10 proceedings, at the discretion of the presiding judicial officer.

11 (3) In any case in which the alleged victim is a juvenile, he
12 or she may be accompanied by his or her parents or representative,
13 at the discretion of the presiding judicial officer.

14 (j) At all adjudicatory hearings held under this article, all
15 procedural rights afforded to adults in criminal proceedings shall
16 be afforded the juvenile unless specifically provided otherwise in
17 this chapter.

18 (k) At all adjudicatory hearings held under this article, the
19 rules of evidence applicable in criminal cases apply, including the
20 rule against written reports based upon hearsay.

21 (l) Except for res gestae, extrajudicial statements made by a
22 juvenile who has not attained fourteen years of age to
23 law-enforcement officials or while in custody are not admissible

1 unless those statements were made in the presence of the juvenile's
2 counsel. Except for res gestae, extrajudicial statements made by a
3 juvenile who has not attained sixteen years of age but who is at
4 least fourteen years of age to law-enforcement officers or while in
5 custody, are not admissible unless made in the presence of the
6 juvenile's counsel or made in the presence of, and with the consent
7 of, the juvenile's parent or custodian, and the parent or custodian
8 has been fully informed regarding the juvenile's right to a prompt
9 detention hearing, the juvenile's right to counsel, including
10 appointed counsel if the juvenile cannot afford counsel, and the
11 juvenile's privilege against self-incrimination.

12 (m) A transcript or recording shall be made of all transfer,
13 adjudicatory and dispositional hearings held in circuit court. At
14 the conclusion of each of these hearings, the circuit court shall
15 make findings of fact and conclusions of law, both of which shall
16 appear on the record. The court reporter shall furnish a transcript
17 of the proceedings at no charge to any indigent juvenile who seeks
18 review of any proceeding under this article if an affidavit is
19 filed stating that neither the juvenile nor the juvenile's parents
20 or custodian have the ability to pay for the transcript.

21 **§49-8-102. Prepetition interventions.**

22 (a) Before a juvenile petition is formally filed with the
23 court, the court may refer the matter to a state department worker

1 or probation officer for preliminary inquiry to determine whether
2 the matter can be resolved informally without the formal filing of
3 a petition with the court.

4 (b) The court at any time, or the department or other official
5 upon a request from a parent, guardian or custodian, may, before
6 proceedings under this article are formally instituted by the
7 filing of a petition with the court, refer a juvenile alleged to be
8 delinquent or a status offender to a counselor at the department or
9 a community mental health center, or other professional counselor
10 in the community. In the event the juvenile refuses to respond to
11 this referral, the department may serve a notice by first class
12 mail or personal service of process upon the juvenile, setting
13 forth the facts and stating that a noncustodial order will be
14 sought from the court directing the juvenile to submit to
15 counseling. The notice shall set forth the time and place for the
16 hearing on the matter. The court after a hearing may direct the
17 juvenile to participate in a noncustodial period of counseling that
18 may not exceed six months. Upon recommendation of the department or
19 request by the juvenile's parent, custodian or guardian, the court
20 may allow or require the parent, custodian or guardian to
21 participate in this noncustodial counseling. No information
22 obtained as the result of this counseling is admissible in a
23 subsequent proceeding under this article.

1 (c) Before a petition is formally filed with the court, the
2 probation officer or other officer of the court designated by it,
3 subject to its direction, may give counsel and advice to the
4 parties with a view to an informal adjustment if it appears:

5 (1) The admitted facts bring the case within the jurisdiction
6 of the court;

7 (2) Counsel and advice without an adjudication would be in the
8 best interest of the public and the juvenile; and

9 (3) The juvenile and his or her parents, guardian or other
10 custodian consent thereto with knowledge that consent is not
11 obligatory.

12 (d) The giving of counsel and advice pursuant to this section
13 may not continue longer than six months from the day it is
14 commenced unless extended by the court for an additional period not
15 to exceed six months.

16 **§49-8-103. Juvenile drug courts.**

17 Juvenile drug courts shall be designed and operated consistent
18 with the developmental and rehabilitative needs of juveniles as
19 defined in this article. The Supreme Court shall provide uniform
20 referral, procedure and order forms that shall be used in juvenile
21 drug courts. The Supreme Court is further authorized to appoint
22 appropriate hearing officers in those jurisdictions which choose to
23 operate a juvenile drug court. Hearing officers for juvenile drug

1 courts shall be limited to current or senior status circuit court
2 judges or family court judges.

3 **§49-8-104. Institution of proceedings by petition; notice to**
4 **juvenile and parents; subpoena.**

5 (a)(1) A petition alleging that a juvenile is a status
6 offender or a juvenile delinquent may be filed by a person who has
7 knowledge of or information concerning the facts alleged. The
8 petition shall be verified by the petitioner, shall set forth the
9 name and address of the juvenile's parents, guardians or
10 custodians, if known to the petitioner, and shall be filed in the
11 circuit court in the county where the alleged status offense or act
12 of delinquency occurred: *Provided*, That any proceeding under this
13 chapter may be removed, for good cause shown, in accordance with
14 section one, article nine, chapter fifty-six of this code. The
15 petition shall contain specific allegations of the conduct and
16 facts upon which the petition is based, including the approximate
17 time and place of the alleged conduct; a statement of the right to
18 have counsel appointed and consult with counsel at every stage of
19 the proceedings; and the relief sought.

20 (2) Upon the filing of the petition, the court shall set a
21 time and place for a preliminary hearing as provided in section
22 nine of this article and may appoint counsel. A copy of the
23 petition and summons may be served upon the respondent juvenile by

1 first class mail or personal service of process. If a juvenile does
2 not appear in response to a summons served by mail, no further
3 proceeding may be held until the juvenile is served a copy of the
4 petition and summons by personal service of process. If a juvenile
5 fails to appear in response to a summons served in person upon him
6 or her, an order of arrest may be issued by the court for that
7 reason alone.

8 (b) The parents, guardians or custodians shall be named in
9 the petition as respondents and shall be served with notice of the
10 proceedings in the same manner as provided in subsection (a) of
11 this section for service upon the juvenile and required to appear
12 with the juvenile at the time and place set for the proceedings
13 unless such respondent cannot be found after diligent search. If
14 any such respondent cannot be found after diligent search, the
15 court may proceed without further requirement of notice: *Provided,*
16 That the court may order service by first class mail to the last
17 known address of such respondent. The respondent shall be afforded
18 fifteen days after the date of mailing to appear or answer.

19 (c) The court or referee may order the issuance of a subpoena
20 against the person having custody and control of the juvenile
21 ordering him or her to bring the juvenile before the court.

22 (d) When any case of a juvenile charged with the commission
23 of a crime is certified or transferred to the circuit court, the

1 court shall forthwith cause the juvenile and his or her parents,
2 guardians or custodians to be served with a petition as provided in
3 subsections (a) and (b) of this section. In the event the juvenile
4 is in custody, the petition shall be served upon the juvenile
5 within ninety-six hours of the time custody began and if the
6 petition is not served within that time, the juvenile shall be
7 released forthwith.

8 (e) The clerk of the court shall promptly notify the local
9 office of the Department of Health and Human Resources of all
10 proceedings under this article, which shall then be responsible for
11 convening and directing the multidisciplinary treatment planning
12 process in accordance with section one hundred three, article
13 eleven of this chapter. In status offense or delinquency cases
14 where a case manager has not been assigned, the juvenile probation
15 officer shall be responsible for notifying the local office of the
16 Department of Health and Human Services which will assign a case
17 manager who will initiate assessment and be responsible for
18 convening and directing the multidisciplinary treatment planning
19 process.

20 (f) Notwithstanding any other provision of this code to the
21 contrary, a petition filed pursuant to section four hundred three,
22 article twenty-seven, chapter forty-eight of this code in which the
23 petition for the emergency protective order is filed by or on

1 behalf of the juvenile's parent, guardian or custodian or other
2 person with whom the juvenile resides and that results in the
3 issuance of an emergency protective order naming a juvenile as the
4 respondent, shall be treated as a petition authorized by this
5 section, alleging the juvenile is a juvenile delinquent: *Provided,*
6 That the magistrate court shall notify the prosecuting attorney in
7 the county where the emergency protective order is issued within
8 twenty-four hours of the issuance of the emergency protective order
9 and the prosecuting attorney may file an amended verified petition
10 to comply with subsection (a) of this section within two judicial
11 days.

12 **§49-8-105. Taking a juvenile into custody.**

13 (a) In proceedings formally instituted by the filing of a
14 juvenile petition, the circuit court or a magistrate may issue an
15 order directing that a juvenile be taken into custody before
16 adjudication only upon a showing of probable cause to believe that
17 one of the following conditions exists: (1) The petition shows that
18 grounds exist for the arrest of an adult in identical
19 circumstances; (2) the health, safety and welfare of the juvenile
20 demand such custody; (3) the juvenile is a fugitive from a lawful
21 custody or commitment order of a juvenile court; or (4) the
22 juvenile is alleged to be a juvenile delinquent with a record of
23 willful failure to appear at juvenile proceedings and custody is

1 necessary to assure his or her presence before the court. A
2 detention hearing pursuant to section one hundred six of this
3 article shall be held by the judge or magistrate authorized to
4 conduct such hearings without unnecessary delay and in no event may
5 any delay exceed the next day.

6 (b) Absent a court order, a juvenile may be taken into
7 custody by a law-enforcement official only if one of the following
8 conditions exists:

9 (1) Grounds exist for the arrest of an adult in identical
10 circumstances;

11 (2) Emergency conditions exist which, in the judgment of the
12 officer, pose imminent danger to the health, safety and welfare of
13 the juvenile;

14 (3) The official has reasonable grounds to believe that the
15 juvenile has left the care of his or her parents, guardian or
16 custodian without the consent of such person and the health, safety
17 and welfare of the juvenile is endangered;

18 (4) The juvenile is a fugitive from a lawful custody or
19 commitment order of a juvenile court;

20 (5) The official has reasonable grounds to believe the
21 juvenile to have been driving a motor vehicle with any amount of
22 alcohol in his or her blood; or

23 (6) The juvenile is the named respondent in an emergency

1 domestic violence protective order issued pursuant to section four
2 hundred three, article twenty-seven, chapter forty-eight of this
3 code and the individual filing the petition for the emergency
4 protective order is the juvenile's parent, guardian or custodian or
5 other person with whom the juvenile resides.

6 (c) Upon taking a juvenile into custody, with or without a
7 court order, the official shall:

8 (1) Immediately notify the juvenile's parent, guardian,
9 custodian or, if the parent, guardian or custodian cannot be
10 located, a close relative;

11 (2) Release the juvenile into the custody of his or her
12 parent, guardian or custodian unless:

13 (A) Circumstances present an immediate threat of serious
14 bodily harm to the juvenile if released;

15 (B) No responsible adult can be found into whose custody the
16 juvenile can be delivered. Each day the juvenile is detained, a
17 written record must be made of all attempts to locate such a
18 responsible adult; or

19 (C) The juvenile has been taken into custody for an alleged
20 act of delinquency for which secure detention is permissible.

21 (3) If the juvenile is an alleged status offender or has been
22 taken into custody pursuant to subdivision (6), subsection (b) of
23 this section, immediately notify the Department of Health and Human

1 Resources and, if the circumstances of either paragraph (A) or (B),
2 subdivision (2) of this subsection exist and the requirements
3 therein are met, the official may detain the juvenile, but only in
4 a nonsecure or staff-secure facility;

5 (4) Take the juvenile without unnecessary delay before a
6 judge of the circuit court for a detention hearing pursuant to
7 section one hundred six of this article. If a circuit court judge
8 is not available in the county, the official shall take the
9 juvenile without unnecessary delay before any magistrate available
10 in the county for the sole purpose of conducting the detention
11 hearing. In no event may any delay in presenting the juvenile for
12 a detention hearing exceed the next day after he or she is taken
13 into custody.

14 (d) In the event that a juvenile is delivered into the
15 custody of a sheriff or director of a detention facility, the
16 sheriff or director shall immediately notify the sheriff or
17 director shall immediately provide to every juvenile who is
18 delivered into his or her custody a written statement explaining
19 the juvenile's right to a prompt detention hearing, his or her
20 right to counsel, including appointed counsel if he or she cannot
21 afford counsel, and his or her privilege against
22 self-incrimination. In all cases when a juvenile is delivered into
23 a sheriff's or detention center director's custody, that official

1 shall release the juvenile to his or her parent, guardian or
2 custodian by the end of the next day unless the juvenile has been
3 placed in detention after a hearing conducted pursuant to section
4 one hundred six of this article.

5 (e) The law-enforcement agency that takes a juvenile into
6 custody or places a juvenile under arrest is responsible for the
7 juvenile's initial transportation to a juvenile detention center or
8 other Division of Juvenile Services' residential facility.

9 (f) Notwithstanding any other provision of this code, a
10 juvenile detention center, or other Division of Juvenile Services'
11 residential facility, is not required to accept a juvenile if the
12 juvenile appears to be in need of medical attention of a degree
13 necessitating treatment by a physician. If a juvenile is refused
14 pursuant to this subsection, the juvenile detention center, or
15 other Division of Juvenile Services' residential facility, may not
16 subsequently accept the juvenile for detention until the arresting
17 or transporting officer provides the juvenile detention center, or
18 other Division of Juvenile Services' residential facility, with a
19 written clearance from a licensed physician reflecting that the
20 juvenile has been examined and, if necessary, treated and which
21 states that in the physician's medical opinion the juvenile can be
22 safely confined in the juvenile detention center or other Division
23 of Juvenile Services' residential facility.

1 §49-8-106. Detention hearing; counsel.

2 (a) The circuit court judge or magistrate shall inform the
3 juvenile of his or her right to remain silent, that any statement
4 may be used against him or her and of his or her right to counsel,
5 and no interrogation may be made without the presence of a parent
6 or counsel. If the juvenile or his or her parent, guardian or
7 custodian has not retained counsel, counsel shall be appointed as
8 soon as practicable. The circuit court judge or magistrate shall
9 hear testimony concerning the circumstances for taking the juvenile
10 into custody and the possible need for detention. The sole
11 mandatory issue at the detention hearing is whether the juvenile
12 should be detained pending further court proceedings. The court
13 shall, if the health, safety and welfare of the juvenile will not
14 be endangered thereby, release the juvenile on recognizance to his
15 or her parents, custodians or an appropriate agency; however, if
16 warranted, the court may require bail, except that bail may be
17 denied in any case where bail could be denied if the accused were
18 an adult. The court shall:

19 (1) Immediately notify the juvenile's parent, guardian or
20 custodian or, if the parent, guardian or custodian cannot be
21 located, a close relative;

22 (2) Release the juvenile into the custody of his or her
23 parent, guardian or custodian unless:

1 (A) Circumstances present an immediate threat of serious
2 bodily harm to the juvenile if released;

3 (B) No responsible adult can be found into whose custody the
4 juvenile can be delivered: *Provided*, That each day the juvenile is
5 detained, a written record must be made of all attempts to locate
6 such a responsible adult; or

7 (C) The juvenile is charged with an act of delinquency for
8 which secure detention is permissible; and

9 (3) If the juvenile is an alleged status offender,
10 immediately notify the department of health and human resources,
11 and, if the circumstances of either paragraph (A) or (B),
12 subdivision (2) of this subsection exist and the requirements
13 therein are met, the court may order the juvenile detained, but
14 only in a nonsecure or staff-secure facility. Any juvenile detained
15 pursuant to this subdivision shall be placed in the legal custody
16 of the department of health and human resources pending further
17 proceedings by the court.

18 (b) The circuit court judge or magistrate may, in
19 conjunction with the detention hearing, conduct a preliminary
20 hearing pursuant to section one hundred seven of this article if
21 all the parties are prepared to proceed and the juvenile has
22 counsel during such hearing.

23 **§49-8-107. Preliminary hearing; counsel; improvement period.**

1 (a) Following the filing of a juvenile petition, unless a
2 preliminary hearing has previously been held in conjunction with a
3 detention hearing with respect to the same charge contained in the
4 petition, the circuit court judge or magistrate shall hold a
5 preliminary hearing. In the event that the juvenile is being
6 detained, the hearing shall be held within ten days of the time the
7 juvenile is placed in detention unless good cause is shown for a
8 continuance. If no preliminary hearing is held within ten days of
9 the time the juvenile is placed in detention, the juvenile shall be
10 released on recognizance unless the hearing has been continued for
11 good cause. If the judge is in another county in the circuit, the
12 hearing may be conducted in that other county or by video
13 conferencing. Written notice shall be provided to all parties of
14 the availability to participate by videoconferencing. The
15 preliminary hearing may be waived by the juvenile, upon advice of
16 counsel. At the hearing, the circuit court judge or magistrate
17 shall:

18 (1) If the juvenile is not represented by counsel, inform the
19 juvenile and his or her parents, guardian or custodian or any other
20 person standing in loco parentis to him or her of the juvenile's
21 right to be represented at all stages of proceedings under this
22 article and the right to have counsel appointed;

23 (2) Appoint counsel by order entered of record, if counsel

1 has not already been retained, or appointed. Counsel must
2 represent the child until he or she is no longer under the
3 jurisdiction of the court;

4 (3) Determine after hearing if there is probable cause to
5 believe that the juvenile is a status offender or a juvenile
6 delinquent. If probable cause is not found, the juvenile, if in
7 detention, shall be released and the proceedings dismissed. If
8 probable cause is found, the case shall proceed to adjudication. At
9 this hearing or as soon thereafter as is practicable, the date for
10 the adjudicatory hearing shall be set to give the juvenile and the
11 juvenile's parents and attorney at least ten days' notice unless
12 notice is waived by all parties;

13 (4) In lieu of placing the juvenile in a detention facility,
14 the court may place the juvenile in the temporary legal and/or
15 physical custody of the department. If the juvenile is detained,
16 the detention may not continue longer than thirty days without
17 commencement of the adjudicatory hearing unless good cause for a
18 continuance is shown by either party or, if a jury trial is
19 demanded, no longer than the next regular term of the court. A
20 juvenile who is alleged to be a status offender may not be placed
21 in a secure detention facility; and

22 (5) Inform the juvenile of the right to demand a jury trial.

23 (b) The juvenile may move to be allowed an improvement period

1 for a period not to exceed one year. If the court is satisfied that
2 the best interest of the juvenile is likely to be served by an
3 improvement period, the court may delay the adjudicatory hearing
4 and allow an improvement period upon terms calculated to serve the
5 rehabilitative needs of the juvenile. At the conclusion of the
6 improvement period, the court shall dismiss the proceeding if the
7 terms have been fulfilled; otherwise, the court shall proceed to
8 the adjudicatory stage. A motion for an improvement period may not
9 be construed as an admission or be used as evidence. Improvement
10 periods authorized by this subsection may be, in the court's
11 discretion, either custodial or noncustodial.

12 **§49-8-108. Jury trial for juveniles.**

13 (a) In a proceeding under this article, the juvenile, the
14 juvenile's counsel or the juvenile's parent or guardian may demand,
15 or the judge on his or her own motion may order a jury trial on any
16 question of fact, in which the juvenile is accused of any act or
17 acts of delinquency which, if committed by an adult would expose
18 the adult to incarceration.

19 (b) A juvenile who is charged with a status offense or other
20 offense where incarceration is not a possibility due either to the
21 statutory penalty or where the court rules pretrial that a sentence
22 of incarceration will not be imposed upon adjudication is not
23 entitled to a trial by jury.

1 (c) This section is inapplicable to proceedings held pursuant
2 to section one hundred seventeen of this article.

3 (d) Juries shall consist of twelve members.

4 **§49-8-109. Waiver and transfer of jurisdiction.**

5 (a) Upon written motion of the prosecuting attorney filed at
6 least eight days prior to the adjudicatory hearing and with
7 reasonable notice to the juvenile, his or her counsel, and his or
8 her parents, guardians or custodians, the court shall conduct a
9 hearing to determine if juvenile jurisdiction should or must be
10 waived and the proceeding transferred to the criminal jurisdiction
11 of the court. Any motion filed in accordance with this section is
12 to state, with particularity, the grounds for the requested
13 transfer, including the grounds relied upon as set forth in
14 subsection (d), (e), (f) or (g) of this section, and the burden is
15 upon the state to establish the grounds by clear and convincing
16 evidence. Any hearing held under this section is to be held within
17 seven days of the filing of the motion for transfer unless it is
18 continued for good cause.

19 (b) No inquiry relative to admission or denial of the
20 allegations of the charge or the demand for jury trial may be made
21 by or before the court until the court has determined whether the
22 proceeding is to be transferred to criminal jurisdiction.

23 (c) The court shall transfer a juvenile proceeding to

1 criminal jurisdiction if a juvenile who has attained the age of
2 fourteen years makes a demand on the record to be transferred to
3 the criminal jurisdiction of the court. The case may then be
4 referred to magistrate or circuit court for further proceedings,
5 subject to the court's jurisdiction.

6 (d) The court shall transfer a juvenile proceeding to
7 criminal jurisdiction if there is probable cause to believe that:

8 (1) The juvenile is at least fourteen years of age and has
9 committed the crime of treason under section one, article one,
10 chapter sixty-one of this code; the crime of murder under sections
11 one, two and three, article two of said chapter; the crime of
12 robbery involving the use or presenting of firearms or other deadly
13 weapons under section twelve of said article; the crime of
14 kidnapping under section fourteen-a of said article; the crime of
15 first degree arson under section one, article three of said
16 chapter; or the crime of sexual assault in the first degree under
17 section three, article eight-b of said chapter;

18 (2) The juvenile is at least fourteen years of age and has
19 committed an offense of violence to the person which would be a
20 felony if the juvenile was an adult: *Provided*, That the juvenile
21 has been previously adjudged delinquent for the commission of an
22 offense of violence to the person which would be a felony if the
23 juvenile was an adult; or

1 (3) The juvenile is at least fourteen years of age and has
2 committed an offense which would be a felony if the juvenile was an
3 adult: *Provided*, That the juvenile has been twice previously
4 adjudged delinquent for the commission of an offense which would be
5 a felony if the juvenile was an adult.

6 (e) The court may transfer a juvenile proceeding to criminal
7 jurisdiction if there is probable cause to believe that the
8 juvenile would otherwise satisfy the provisions of subdivision (1),
9 subsection (d) of this section, but who is younger than fourteen
10 years of age.

11 (f) The court may, upon consideration of the juvenile's
12 mental and physical condition, maturity, emotional attitude, home
13 or family environment, school experience and similar personal
14 factors, transfer a juvenile proceeding to criminal jurisdiction if
15 there is probable cause to believe that the juvenile would
16 otherwise satisfy the provisions of subdivision (2) or (3),
17 subsection (d) of this section, but who is younger than fourteen
18 years of age.

19 (g) The court may, upon consideration of the juvenile's
20 mental and physical condition, maturity, emotional attitude, home
21 or family environment, school experience and similar personal
22 factors, transfer a juvenile proceeding to criminal jurisdiction if
23 there is probable cause to believe that:

1 (1) The juvenile, who is at least fourteen years of age, has
2 committed an offense of violence to a person which would be a
3 felony if the juvenile was an adult;

4 (2) The juvenile, who is at least fourteen years of age, has
5 committed an offense which would be a felony if the juvenile was an
6 adult: *Provided*, That the juvenile has been previously adjudged
7 delinquent for the commission of a crime which would be a felony if
8 the juvenile was an adult;

9 (3) The juvenile, who is at least fourteen years of age, used
10 or presented a firearm or other deadly weapon during the commission
11 of a felony; or

12 (4) The juvenile has committed a violation of section four
13 hundred one, article four, chapter sixty-a of this code which would
14 be a felony if the juvenile was an adult involving the manufacture,
15 delivery or possession with the intent to deliver a narcotic drug.
16 For purposes of this subdivision, the term narcotic drug has the
17 same definition as that set forth in section one hundred one,
18 article one of said chapter;

19 (5) The juvenile has committed the crime of second degree
20 arson as defined in section two, article three, chapter sixty-one
21 of this code involving setting fire to or burning a public building
22 or church. For purposes of this subdivision, the term public
23 building means a building or structure of any nature owned, leased

1 or occupied by this state, a political subdivision of this state or
2 a county board of education and used at the time of the alleged
3 offense for public purposes. For purposes of this subdivision, the
4 term church means a building or structure of any nature owned,
5 leased or occupied by a church, religious sect, society or
6 denomination and used at the time of the alleged offense for
7 religious worship or other religious or benevolent purpose, or as
8 a residence of a minister or other member of clergy.

9 (h) For purposes of this section, the term offense of
10 violence means an offense which involves the use or threatened use
11 of physical force against a person.

12 (i) If, after a hearing, the court directs the transfer of
13 any juvenile proceeding to criminal jurisdiction, it shall state on
14 the record the findings of fact and conclusions of law upon which
15 its decision is based or shall incorporate findings of fact and
16 conclusions of law in its order directing transfer.

17 (j) A juvenile who has been transferred to criminal
18 jurisdiction pursuant to subsection (e), (f) or (g) of this
19 section, by an order of transfer, has the right to either directly
20 appeal an order of transfer to the supreme court of appeals or to
21 appeal the order of transfer following a conviction of the offense
22 of transfer. If the juvenile exercises the right to a direct appeal
23 from an order of transfer, the notice of intent to appeal and a

1 request for transcript is to be filed within ten days from the date
2 of the entry of any such order of transfer, and the petition for
3 appeal is to be presented to the Supreme Court of Appeals within
4 forty-five days from the entry of the order of transfer. Article
5 five, chapter fifty-eight of this code pertaining to the appeals of
6 judgments in civil actions applies to appeals under this chapter
7 except as modified in this section. The court may, within
8 forty-five days of the entry of the order of transfer, by
9 appropriate order, extend and reextend the period in which to file
10 the petition for appeal for additional time, not to exceed a total
11 extension of sixty days, as in the court's opinion may be necessary
12 for preparation of the transcript: *Provided*, That the request for
13 a transcript was made by the party seeking appeal within ten days
14 of entry of the order of transfer. In the event any notice of
15 intent to appeal and request for transcript be timely filed,
16 proceedings in criminal court are to be stayed upon motion of the
17 defendant pending final action of the Supreme Court of Appeals.

18 **§49-8-110. Adjudication for alleged status offenders and**
19 **delinquents; mandatory initial disposition of**
20 **status offenders.**

21 At the outset of an adjudicatory hearing, the court shall
22 inquire of the juvenile whether he or she wishes to admit or deny
23 the allegations in the petition. The juvenile may elect to stand

1 mute, in which event the court shall enter a general denial of all
2 allegations in the petition.

3 (1) If the respondent juvenile admits the allegations of the
4 petition, the court shall consider the admission to be proof of the
5 allegations if the court finds: (1) The respondent fully
6 understands all of his or her rights under this article; (2) the
7 respondent voluntarily, intelligently and knowingly admits all
8 facts requisite for an adjudication; and (3) the respondent in his
9 or her admission has not set forth facts which constitute a defense
10 to the allegations.

11 (2) If the respondent juvenile denies the allegations, the
12 court shall dispose of all pretrial motions and the court or jury
13 shall proceed to hear evidence.

14 (3) If the allegations in a petition alleging that the
15 juvenile is delinquent are admitted or are sustained by proof
16 beyond a reasonable doubt, the court shall schedule the matter for
17 disposition pursuant to section one hundred thirteen of this
18 article.

19 (4) If the allegations in a petition alleging that the
20 juvenile is a status offender are admitted or sustained by clear
21 and convincing proof, the court shall refer the juvenile to the
22 Department of Health and Human Resources for services, pursuant to
23 section one hundred eleven of this article and order the department

1 to report back to the court with regard to the juvenile's progress
2 at least every ninety days or until the court, upon motion or sua
3 sponte, orders further disposition under section one hundred
4 thirteen of this article or dismisses the case from its docket. In
5 a judicial circuit operating its own truancy program, a circuit
6 judge may in lieu of referring truant juveniles to the department,
7 order that the juveniles be supervised by his or her probation
8 office.

9 (5) If the allegations in a petition are not sustained by
10 proof as provided in subsections (3) and (4) of this section, the
11 petition shall be dismissed and the juvenile shall be discharged if
12 he or she is in custody.

13 (6) Findings of fact and conclusions of law addressed to all
14 allegations in the petition shall be stated on the record or
15 reduced to writing and filed with the record or incorporated into
16 the order of the court.

17 **§49-8-111. Status offenders: intervention and services by state**
18 **department pursuant to initial disposition;**
19 **enforcement; further disposition; detention;**
20 **out-of-home placement; state department custody;**
21 **least restrictive alternative; appeal.**

22 (a) Services provided by the department for juveniles

1 adjudicated as status offenders shall be consistent with article
2 nine of this chapter and shall be designed to develop skills and
3 supports within families and to resolve problems related to the
4 juveniles or conflicts within their families. Services may include,
5 but are not limited to, referral of juveniles and parents,
6 guardians or custodians and other family members to services for
7 psychiatric or other medical care, or psychological, welfare,
8 legal, educational or other social services, as appropriate to the
9 needs of the juvenile and his or her family.

10 (b) If necessary services are not available or the child or
11 family of the child fails to comply with the service plan, the
12 department may petition the circuit court:

13 (1) For a valid court order, as defined in section two hundred
14 one, article one of this chapter, to enforce compliance with a
15 service plan or to restrain actions that interfere with or defeat
16 a service plan; or

17 (2) For a valid court order to place a juvenile out of home in
18 a nonsecure or staff-secure setting, and/or to place a juvenile in
19 custody of the department.

20 (c) In ordering any further disposition under this section,
21 the court is not limited to the relief sought in the department's
22 petition and shall make every effort to provide the juvenile with
23 services in his or her home or as an alternative to place juveniles

1 in community-based facilities which are the least restrictive
2 alternatives appropriate to the needs of the juvenile and the
3 community.

4 (d) The disposition of the juvenile may not be affected by the
5 fact that the juvenile demanded a trial by jury or made a plea of
6 denial. Any order providing disposition other than mandatory
7 referral to the department for services is subject to appeal to the
8 Supreme Court of Appeals.

9 (e) Following any further disposition by the court, the court
10 shall inquire of the juvenile whether or not appeal is desired and
11 the response shall be transcribed; a negative response may not be
12 construed as a waiver. The evidence shall be transcribed as soon as
13 practicable and made available to the juvenile or his or her
14 counsel, if it is requested for purposes of further proceedings. A
15 judge may grant a stay of execution pending further proceedings.

16 **§49-8-112. Prosecuting attorney to represent petitioner.**

17 The prosecuting attorney shall represent the petitioner in all
18 proceedings under this article before the circuit court judge or
19 magistrate having juvenile jurisdiction.

20 **§49-8-113. Disposition of juvenile delinquents; appeal.**

21 (a) In aid of disposition of juvenile delinquents, the
22 juvenile probation officer assigned to the court shall, upon
23 request of the court, make an investigation of the environment of

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

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

15 (1) Dismiss the petition;

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

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

1 parent or custodian; and (B) prescribe a program of treatment or
2 therapy or limit the juvenile's activities under terms which are
3 reasonable and within the child's ability to perform, including
4 participation in the litter control program established pursuant to
5 section three, article fifteen-a, chapter twenty-two of this code
6 or other 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 one hundred six, article sixteen of this chapter and guidelines
22 promulgated by the Supreme Court of Appeals;

23 (5) (A) Upon a finding that the best interests of the juvenile

1 or the welfare of the public require it, and upon an adjudication
2 of delinquency the court may commit the juvenile to the custody of
3 the Director of the Division of Juvenile Services for placement in
4 a juvenile services facility for the treatment, instruction and
5 rehabilitation of juveniles. The court maintains discretion to
6 consider alternative sentencing arrangements.

7 (B) Notwithstanding any provision of this code to the
8 contrary, in the event that the court determines that it is in the
9 juvenile's best interests or required by the public welfare to
10 place the juvenile in the custody of the Division of Juvenile
11 Services, the court shall provide the Division of Juvenile Services
12 with access to all relevant court orders and records involving the
13 underlying offense or offenses for which the juvenile was
14 adjudicated delinquent, including sentencing and presentencing
15 reports and evaluations, and provide the division with access to
16 school records, psychological reports and evaluations, medical
17 reports and evaluations or any other such records as may be in the
18 court's possession as would enable the Division of Juvenile
19 Services to better assess and determine the appropriate counseling,
20 education and placement needs for the juvenile offender.

21 (C) Commitments shall not exceed the maximum term for which an
22 adult could have been sentenced for the same offense and any such
23 maximum allowable sentence to be served in a juvenile correctional

1 facility may take into account any time served by the juvenile in
2 a detention center pending adjudication, disposition or transfer.
3 The order shall state that continuation in the home is contrary to
4 the best interests of the juvenile and why; and whether or not the
5 state department made a reasonable effort to prevent the placement
6 or that the emergency situation made such efforts unreasonable or
7 impossible; or

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

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

23 (d) The disposition of the juvenile shall not be affected by

1 the fact that the juvenile demanded a trial by jury or made a plea
2 of denial. Any dispositional order is subject to appeal to the
3 Supreme Court of Appeals.

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

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

16 **§49-8-114. Examination, diagnosis and classification; period of**
17 **custody.**

18 (a) As a part of the dispositional proceeding for a juvenile
19 who has been adjudicated delinquent, the court may, upon its own
20 motion or upon request of counsel, order the juvenile to be
21 delivered into the custody of the Director of the Division of
22 Juvenile Services, who shall cause the juvenile to be transferred
23 to a juvenile diagnostic center for a period not to exceed sixty

1 days. During this period, the juvenile shall undergo examination,
2 diagnosis, classification and a complete medical examination and
3 shall at all times be kept apart from the general juvenile
4 population in the director's custody.

5 (b) During the examination period established by subsection
6 (a) of this section, the director, or his or her designee, shall
7 convene and direct a multidisciplinary treatment team for the
8 juvenile which team shall include the juvenile, if appropriate, the
9 juvenile's probation officer, the juvenile's social worker, if any,
10 the juvenile's custodial parent or parents, the juvenile's
11 guardian, attorneys representing the juvenile or the parents, the
12 guardian ad litem, if any, the prosecuting attorney and an
13 appropriate school official or representative. The team may also
14 include, where appropriate, a court-appointed special advocate, a
15 member of a child advocacy center and any other person who may
16 assist in providing recommendations for the particular needs of the
17 juvenile and the family.

18 (c) Not later than sixty days after commitment pursuant to
19 this section the juvenile shall be remanded and delivered to the
20 custody of the director, an appropriate agency or any other person
21 that the court by its order directs. Within ten days after the end
22 of the examination, diagnosis and classification, the Director of
23 the Division of Juvenile Services shall make or cause to be made a

1 report to the court containing the results, findings, conclusions
2 and recommendations of the multidisciplinary team with respect to
3 that juvenile.

4 **§49-8-115. Authority of the courts to order fines; revocation of**
5 **vehicle privileges and restitution.**

6 (a) In addition to the methods of disposition provided in
7 section one hundred thirteen of this article, the court may enter
8 an order imposing one or more of the following penalties,
9 conditions and limitations:

10 (1) Impose a fine not to exceed \$100 upon such child;

11 (2) Require the child to make restitution or reparation to the
12 aggrieved party or parties for actual damages or loss caused by the
13 offense for which the child was found to be delinquent, or if the
14 child does not make full restitution, require the custodial parent
15 or parents, as defined in section two, article seven-a, chapter
16 fifty-five, of the child to make partial or full restitution to the
17 victim to the extent the child fails to make full restitution;

18 (3) Require the child to participate in a public service
19 project under such conditions as the court prescribes, including
20 participation in the litter control program established pursuant to
21 the authority of section three, article fifteen-a, chapter
22 twenty-two of this code; and

23 (4) When the child is fifteen years of age or younger and has

1 been adjudged delinquent, the court may order that the child is not
2 eligible to be issued a junior probationary operator's license or
3 when the child is between the ages of sixteen and eighteen years
4 and has been adjudged delinquent, the court may order that the
5 child is not eligible to operate a motor vehicle in this state, and
6 any junior or probationary operator's license shall be surrendered
7 to the court. Such child's driving privileges shall be suspended
8 for a period not to exceed two years, and the clerk of the court
9 shall notify the Commissioner of the Division of Motor Vehicles of
10 such order.

11 (b) Nothing shall limit the discretion of the court in
12 disposing of a juvenile case. The juvenile shall not be denied
13 probation or any other disposition pursuant to this article because
14 the juvenile is financially unable to pay a fine or make
15 restitution or reparation. All penalties, conditions and
16 limitations imposed under this section shall be based upon a
17 consideration by the court of the seriousness of the offense, the
18 child's ability to pay and a program of rehabilitation consistent
19 with the best interests of the child.

20 (c) Notwithstanding any other provisions of this code to the
21 contrary, in the event a child charged with delinquency under this
22 chapter is transferred to adult jurisdiction and there convicted,
23 the court may nevertheless, in lieu of sentencing such person as an

1 adult, make its disposition in accordance with this section.

2 **§49-8-116. Graduated sanctions for juvenile alcohol consumption.**

3 (a) Notwithstanding any provision of this article to the
4 contrary, in addition to any other penalty available to the court,
5 any child who is adjudicated to have consumed alcoholic liquor or
6 nonintoxicating beer as defined in section five, article one,
7 chapter sixty of this code, shall:

8 (1) Upon a first adjudication, he or she shall be ordered to
9 perform community service for not more than eight hours or fined
10 not more than \$25, or both performing community service and fined.

11 (2) Upon a second adjudication, he or she shall be ordered to
12 perform community service for not more than sixteen hours or fined
13 not more than \$50, or both performing community service and fined.

14 (3) Upon a third or subsequent adjudication, he or she shall
15 be ordered to perform not more than twenty-four hours of community
16 service or fined not more than \$100, or both performing community
17 service and fined.

18 (b) In addition to the penalties set forth in subsection (a)
19 of this section and notwithstanding the provisions of subdivision
20 (4), subsection (c), section one hundred fifteen of this article,
21 any child adjudicated a second time for consumption of alcoholic
22 liquor or nonintoxicating beer shall have his or her license to
23 operate a motor vehicle suspended for a definite term of not less

1 than five nor more than ninety days. Any child adjudicated a third
2 or subsequent time for consumption of an alcoholic liquor or
3 nonintoxicating beer shall have his or her license to operate a
4 motor vehicle suspended until he or she attains the age of eighteen
5 years.

6 **§49-8-117. Teen court program.**

7 (a) Notwithstanding any provision of this article to the
8 contrary, in any county or municipality that chooses to institute
9 a teen court program in accordance with this section, any juvenile
10 who is alleged to have committed a status offense or an act of
11 delinquency which would be a misdemeanor if committed by an adult
12 or in the case of a violation of a municipal ordinance, an offense
13 over which municipal courts have concurrent jurisdiction, and who
14 is otherwise subject to this article may be given the option of
15 proceeding in the teen court program as an alternative to the
16 filing of a formal petition under section one hundred four of this
17 article or proceeding to a disposition as provided by section one
18 hundred eleven or section one hundred thirteen of this article, as
19 the case may be. The decision to extend the option to enter the
20 teen court program as an alternative procedure shall be made by the
21 circuit or municipal court if the court finds that the offender is
22 a suitable candidate for the program. No juvenile may enter the
23 teen court program unless he or she and his or her parent or

1 guardian consent. Any juvenile who does not successfully cooperate
2 in and complete the teen court program and any disposition imposed
3 therein shall be returned to the circuit court for further
4 disposition as provided by section one hundred eleven or one
5 hundred thirteen of this article, as the case may be or return to
6 a municipal court for further disposition for cases originating in
7 circuit court consistent with any applicable ordinance.

8 (b) The following provisions apply to all teen court programs:

9 (1) The judge for each teen court proceeding shall be an
10 acting or retired circuit court judge or an active member of the
11 West Virginia State Bar, who serves on a voluntary basis.

12 (2) Any juvenile who selects the teen court program as an
13 alternative disposition shall agree to serve thereafter on at least
14 two occasions as a teen court juror.

15 (3) Volunteer students from grades seven through twelve of the
16 schools within the county shall be selected to serve as defense
17 attorney, prosecuting attorney, court clerk, bailiff and jurors for
18 each proceeding.

19 (4) Disposition in a teen court proceeding shall consist of
20 requiring the juvenile to perform sixteen to forty hours of
21 community service, the duration and type of which shall be
22 determined by the teen court jury from a standard list of available
23 community service programs provided by the county juvenile

1 probation system and a standard list of alternative consequences
2 that are consistent with the purposes of this article. The
3 performance of the juvenile shall be monitored by the county
4 juvenile probation system for cases originating in the circuit
5 court's jurisdiction, or municipal teen court coordinator or other
6 designee for cases originating in the municipal court's
7 jurisdiction. The juvenile shall also perform at least two sessions
8 of teen court jury service and, if considered appropriate by the
9 circuit court judge or teen court judge, participate in an
10 education program. Nothing in this section may be construed so as
11 to deny availability of the services provided under section
12 eleven-a of this article to juveniles who are otherwise eligible
13 for such service.

14 (c) The rules for administration, procedure and admission of
15 evidence shall be determined by the chief circuit judge or teen
16 court judge, but in no case may the court require a juvenile to
17 admit the allegation against him or her as a prerequisite to
18 participation in the teen court program. A copy of these rules
19 shall be provided to every teen court participant.

20 (d) Each county or municipality that operates, or wishes to
21 operate, a teen court program as provided in this section is hereby
22 authorized to adopt a mandatory fee of up to \$5 to be assessed as
23 provided in this subsection. Municipal courts may assess a fee

1 pursuant to this section upon authorization by the city council of
2 the municipality. Assessments collected by the clerk of the court
3 pursuant to this subsection shall be deposited into an account
4 specifically for the operation and administration of a teen court
5 program. The clerk of the court of conviction shall collect the
6 fees established in this subsection and shall remit the fees to the
7 teen court program.

8 (e) Any mandatory fee established by a county commission or
9 city council in accordance with this subsection shall be paid by
10 the defendant on a judgment of guilty or a plea of nolo contendere
11 for each violation committed in the county or municipality of any
12 felony, misdemeanor or any local ordinance, including traffic
13 violations and moving violations but excluding municipal parking
14 ordinances. Municipalities operating teen courts are authorized to
15 use fees assessed in municipal court pursuant to this subsection
16 for operation of a teen court in their municipality
17 **§49-8-118. Sexting educational diversion program.**

18 (a) Before a juvenile petition is filed for activity
19 proscribed by article eight-a or eight-c, chapter sixty-one of this
20 code, or after probable cause has been found to believe a juvenile
21 has committed a violation thereof, but before an adjudicatory
22 hearing on the petition, the court or a prosecuting attorney may
23 direct or allow a minor who engaged in such activity to participate

1 in an educational diversion program which meets the requirements of
2 subsection (b) of this section. The prosecutor or court may refer
3 the minor to the educational diversion program, as part of a
4 prepetition diversion and informal resolution pursuant to section
5 one hundred two of this article, as part of counseling provided
6 pursuant to section one hundred two or one hundred three of this
7 article; or as part of the requirements of an improvement period to
8 be satisfied in advance of an adjudicatory hearing pursuant to
9 section one hundred seven of this article.

10 (b) The West Virginia Supreme Court of Appeals may develop an
11 educational diversion program for minors who are accused of
12 activity proscribed by article eight-a or eight-c, chapter
13 sixty-one of this code. As a part of any specialized educational
14 diversion program so developed, the following issues and topics
15 should be included:

16 (1) The legal consequences of and penalties for sharing
17 sexually suggestive or explicit materials, including applicable
18 federal and state statutes;

19 (2) The nonlegal consequences of sharing sexually suggestive
20 or explicit materials including, but not limited to, the effect on
21 relationships, loss of educational and employment opportunities,
22 and being barred or removed from school programs and
23 extracurricular activities;

1 (3) How the unique characteristics of cyberspace and the
2 Internet, including searchability, replicability and an infinite
3 audience, can produce long-term and unforeseen consequences for
4 sharing sexually suggestive or explicit materials; and

5 (4) The connection between bullying and cyber-bullying and
6 minors sharing sexually suggestive or explicit materials.

7 (c) Once a specialized educational diversion program is
8 established by the West Virginia Supreme Court of Appeals
9 consistent with this section, the minor's successful completion of
10 the educational diversion program shall be duly considered by the
11 prosecutor or the court in their respective decisions to either
12 abstain from filing the juvenile petition or to dismiss the
13 juvenile petition, as follows:

14 (1) If the minor has not previously been judicially determined
15 to be delinquent, and the minor's activities represent a first
16 offense for a violation of section three-b, article eight-c,
17 chapter sixty-one of this code, the minor shall not be subject to
18 the requirements of said section, as long as he or she successfully
19 completes the educational diversion program; and

20 (2) If the minor commits a second or subsequent violation of
21 article eight-a or eight-c, chapter sixty-one of this code, the
22 minor's successful completion of the educational diversion program
23 may be considered as a factor to be considered by the prosecutor

1 and court in deciding to not file a petition or to dismiss a
2 petition, upon successful completion of an improvement plan
3 established by the court.

4 **§49-8-119. Modification of dispositional orders.**

5 (a) A dispositional order of the court may be modified:

6 (1) Upon the motion of the probation officer, a department
7 official, the director of the division of juvenile services or
8 prosecuting attorney; or

9 (2) Upon the request of the child or a child's parent or
10 custodian who alleges a change of circumstances relating to
11 disposition of the child.

12 (b) Upon such a motion or request, the court shall conduct a
13 review proceeding, except that if the last dispositional order was
14 within the previous six months the court may deny a request for
15 review. Notice in writing of a review proceeding shall be given to
16 the child, the child's parent or custodian and all counsel not less
17 than seventy-two hours prior to the proceeding. The court shall
18 review the performance of the child, the child's parent or
19 custodian, the child's social worker and other persons providing
20 assistance to the child or child's family. If the motion or request
21 for review of disposition is based upon an alleged violation of a
22 court order, the court may modify the dispositional order to a more
23 restrictive alternative if it finds clear and convincing proof of

1 substantial violation. In the absence of such proof, the court may
2 decline to modify the dispositional order or may modify the order
3 to one of the less restrictive alternatives set forth in section
4 thirteen of this article. No juvenile may be required to seek a
5 modification order as provided in this section in order to exercise
6 his or her right to seek release by habeas corpus.

7 (c) In a hearing for modification of a dispositional order, or
8 in any other dispositional hearing, the court shall consider the
9 best interests of the child and the welfare of the public.

10 **§49-8-120. Juvenile probation officers; appointment; salary;**
11 **facilities; expenses; duties; powers.**

12 (a) (1) Each circuit court, subject to the approval of the
13 Supreme Court of Appeals and in accordance with the rules of the
14 Supreme Court of Appeals, shall appoint one or more juvenile
15 probation officers and clerical assistants for the circuit. A
16 probation officer or clerical assistant may not be related by blood
17 or marriage to the appointing judge.

18 (2) The salary for juvenile probation officers and clerical
19 assistants shall be determined and fixed by the Supreme Court of
20 Appeals. All expenses and costs incurred by the juvenile probation
21 officers and their staff shall be paid by the Supreme Court of
22 Appeals in accordance with its rules. The county commission of each
23 county shall provide adequate office facilities for juvenile

1 probation officers and their staff. All equipment and supplies
2 required by juvenile probation officers and their staff shall be
3 provided by the Supreme Court of Appeals.

4 (3) A juvenile probation officer may not be considered a
5 law-enforcement official under this chapter.

6 (b) The clerk of a court shall notify, if practicable, the
7 chief probation officer of the county, or his or her designee, when
8 a juvenile is brought before the court or judge for proceedings
9 under this article. When notified, or if the probation officer
10 otherwise obtains knowledge of such fact, he or she or one of his
11 or her assistants shall:

12 (1) Make investigation of the case; and

13 (2) Furnish information and assistance that the court or judge
14 may require.

15 **§49-8-121. Prohibition on committing juveniles to adult**
16 **facilities.**

17 (a) No juvenile, including one who has been transferred to
18 criminal jurisdiction of the court, shall be detained or confined
19 in any institution in which he or she has contact with or comes
20 within sight or sound of any adult persons incarcerated because
21 they have been convicted of a crime or are awaiting trial on
22 criminal charges or with the security staff (including management)
23 or direct-care staff of a jail or locked facility for adults.

1 (b) No child who has been convicted of an offense under the
2 adult jurisdiction of the circuit court shall be held in custody in
3 a correctional facility of this state. The Division of Juvenile
4 Services shall be responsible for notifying the sentencing court
5 within forty-five days of the child's eighteenth birthday that the
6 child will be turning eighteen years of age. Within ten days of
7 the child's eighteenth birthday, the court shall transfer the
8 offender to an adult correctional facility or to any other
9 disposition the court deems appropriate for adult offenders. Any
10 other provision of this code to the contrary notwithstanding, prior
11 to such transfer the child shall be returned to the sentencing
12 court for the purpose of reconsideration and modification of the
13 imposed sentence, which shall be based upon a review of all records
14 and relevant information relating to the child's rehabilitation
15 since his or her conviction under the adult jurisdiction of the
16 court.

17 **§49-8-122. Rules governing juvenile facilities.**

18 (a) The Director of the Division of Juvenile Services within
19 the Department of Military Affairs and Public Safety shall propose
20 legislative rules for promulgation in accordance with article
21 three, chapter twenty-nine-a of this code, outlining policies and
22 procedures governing the operation of those correctional,
23 detention, predispositional detention centers and other facilities

1 wherein juveniles may be housed. These policies and procedures
2 shall include, but are not limited to, standards of cleanliness,
3 temperature and lighting; availability of medical and dental care;
4 provision of food, furnishings, clothing and toilet articles;
5 supervision; procedures for enforcing rules of conduct consistent
6 with due process of law; and visitation privileges. A juvenile in
7 custody or detention has, at a minimum, the following rights, and
8 the policies prescribed shall ensure that:

9 (1) A juvenile may not be punished by physical force,
10 deprivation of nutritious meals, deprivation of family visits or
11 imposition of solitary confinement;

12 (2) A juvenile shall be afforded an opportunity to participate
13 in physical exercise each day;

14 (3) Except for sleeping hours, a juvenile in a state facility
15 may not be locked alone in a room unless that juvenile is not
16 amenable to reasonable direction and control;

17 (4) A juvenile shall be provided with his or her own clothing
18 or individualized clothing which is clean and supplied by the
19 facility, and shall also be afforded daily access to showers;

20 (5) A juvenile shall be afforded constant access to writing
21 materials and may send mail without limitation, censorship or prior
22 reading, and may receive mail without prior reading, except that
23 mail may be opened in the juvenile's presence, without being read,

1 to inspect for contraband;

2 (6) A juvenile may make and receive regular local phone calls
3 without charge and long distance calls to his or her family without
4 charge at least once a week, and receive visitors daily and on a
5 regular basis;

6 (7) A juvenile shall be afforded immediate access to medical
7 care as needed;

8 (8) A juvenile in a juvenile detention facility or juvenile
9 corrections facility shall be provided access to education,
10 including teaching, educational materials and books;

11 (9) A juvenile shall be afforded reasonable access to an
12 attorney upon request; and

13 (10) A juvenile shall be afforded a grievance procedure,
14 including an appeal mechanism.

15 (b) Upon admission to a detention facility or juvenile
16 corrections facility, a juvenile shall be furnished with a copy of
17 the rights provided him or her by virtue of this section and as
18 further prescribed by rules proposed and promulgated pursuant to
19 this section.

20 **§49-8-123. Conviction for offense while in custody.**

21 (a) Notwithstanding any other provision of law to the
22 contrary, any person who is eighteen years of age or older who is
23 convicted as an adult of an offense that he or she committed while

1 in the custody of the Division of Juvenile Services and who is
2 therefor sentenced to a regional jail or state correctional
3 facility for said offense may not be returned to the custody of the
4 division upon the completion of his or her adult sentence until a
5 hearing is held before the court which committed the person to the
6 custody of the Division of Juvenile Services at which hearing the
7 division may present any objections it may have to return the
8 person to its custody. If the division does object and the court
9 overrules the division's objections, it shall make specific written
10 findings as to its rationale for overruling the objections.

11 (b) No person who is eighteen years of age or older who is
12 convicted as an adult of a felony crime of violence against the
13 person while in the custody of the Division of Juvenile Services be
14 returned to the custody of the Division of Juvenile Services upon
15 completion of his or her adult sentence.

16 **§49-8-124. Discrimination prohibited.**

17 (a) No individual, firm, corporation or other entity shall
18 discriminate against any person in any manner due to that person's
19 prior involvement in a proceeding under this article if that
20 person's records have been expunged pursuant to this article. This
21 includes, but is not limited to, discrimination relating to
22 employment, housing, education, obtaining credit, and contractual
23 rights.

1 (b) Any person who willfully violates this section shall be
2 guilty of a misdemeanor and, upon conviction, shall be fined not
3 more than \$1,000, or confined in a jail for not more than six
4 months, or both fined and confined. Furthermore, a violator of
5 this section shall be liable to the person who has been
6 discriminated against for damages in the amount of \$300 or the
7 actual amount of damages, whichever is greater.

8 **§49-8-125. After-care plans.**

9 (a) Prior to the discharge of a juvenile from any institution
10 or facility to which the juvenile was committed pursuant to
11 subdivision (5) or (6), subsection (b), section one hundred
12 thirteen of this article, the superintendent of the institution or
13 facility shall call a meeting of the multidisciplinary treatment
14 team to which the child has been referred or, if no referral has
15 been made, convene a multidisciplinary treatment team for any child
16 for which a multidisciplinary treatment plan is required by section
17 one hundred three of article eleven of this article and forward a
18 copy of the juvenile's proposed after-care plan to the circuit
19 court which committed the juvenile. A copy of the plan shall also
20 be sent to: (1) The juvenile's parents or legal guardian; (2) the
21 juvenile's lawyer; (3) the juvenile's probation officer or
22 community mental health center professional; (4) the prosecuting
23 attorney of the county in which the original commitment proceedings

1 were held; and (5) the principal of the school which the juvenile
2 will attend. The plan shall have a list of the names and addresses
3 of these persons attached to it.

4 (b) The after-care plan shall contain a detailed description
5 of the education, counseling and treatment which the juvenile
6 received while at the institution or facility and it shall also
7 propose a plan for education, counseling and treatment for the
8 juvenile upon the juvenile's discharge. The plan shall also contain
9 a description of any problems the juvenile has, including the
10 source of those problems, and it shall propose a manner for
11 addressing those problems upon discharge.

12 (c) Within twenty-one days of receiving the plan, the
13 juvenile's probation officer or community mental health center
14 professional shall submit written comments upon the plan to the
15 circuit court which committed the juvenile. Any other person who
16 received a copy of the plan pursuant to subsection (a) of this
17 section may submit written comments upon the plan to the circuit
18 court which committed the juvenile. Any person who submits comments
19 upon the plan shall send a copy of those comments to every other
20 person who received a copy of the plan.

21 (d) Within twenty-one days of receiving the plan, the
22 juvenile's probation officer or community mental health center
23 professional shall contact all persons, organizations and agencies

1 which are to be involved in executing the plan to determine whether
2 they are capable of executing their responsibilities under the plan
3 and to further determine whether they are willing to execute their
4 responsibilities under the plan.

5 (e) If adverse comments or objections regarding the plan are
6 submitted to the circuit court, it shall, within forty-five days of
7 receiving the plan, hold a hearing to consider the plan and the
8 adverse comments or objections. Any person, organization or agency
9 which has responsibilities in executing the plan, or their
10 representatives, may be required to appear at the hearing unless
11 they are excused by the circuit court. Within five days of the
12 hearing, the circuit court shall issue an order which adopts the
13 plan as submitted or as modified in response to any comments or
14 objections.

15 (f) If no adverse comments or objections are submitted, a
16 hearing need not be held. In that case, the circuit court shall
17 consider the plan as submitted and shall, within forty-five days of
18 receiving the plan, issue an order which adopts the plan as
19 submitted.

20 (g) Notwithstanding the provisions of subsections (e) and (f)
21 of this section, the plan which is adopted by the circuit court
22 shall be in the best interests of the juvenile and shall also be in
23 conformity with West Virginia's interest in youth as embodied in

1 subsection (b), section thirteen of this article.

2 (h) The circuit court which committed the juvenile shall
3 appoint the juvenile's probation officer or community mental health
4 center professional to act as supervisor of the plan. The
5 supervisor shall report the juvenile's progress under the plan to
6 the circuit court every sixty days or until the circuit court
7 determines that no report or no further care is necessary.

8 **ARTICLE 9. WEST VIRGINIA JUVENILE OFFENDER REHABILITATION ACT.**

9 **§49-9-101. Purpose and intent.**

10 It is the intent of the Legislature to provide for the
11 creation of all reasonable means and methods that can be
12 established by a humane and enlightened state, solicitous of the
13 welfare of its children, for the prevention of delinquency and for
14 the care and rehabilitation of juvenile delinquents and status
15 offenders. It is further the intent of the Legislature that this
16 state, through the Department of Health and Human Resources and the
17 Division of Juvenile Services, establish, maintain, and
18 continuously refine and develop, a balanced and comprehensive state
19 program for juveniles who are potentially delinquent or are status
20 offenders or juvenile delinquents in the care or custody of the
21 department.

22 **§49-9-102. Responsibilities of the Department of Health and Human**
23 **Resources and Division of Juvenile Services of the**

1 **Department of Military Affairs and Public Safety.**

2 (a) The Department of Health and Human Resources and the
3 Division of Juvenile Services of the Department of Military Affairs
4 and Public Safety shall establish programs and services designed to
5 prevent juvenile delinquency, to divert juveniles from the juvenile
6 justice system, to provide community-based alternatives to juvenile
7 detention and correctional facilities and to encourage a diversity
8 of alternatives within the child welfare and juvenile justice
9 system. The development, maintenance and expansion of programs and
10 services may include, but not be limited to, the following:

11 (1) Community-based programs and services for the prevention
12 and treatment of juvenile delinquency through the development of
13 foster-care and shelter-care homes, group homes, halfway houses,
14 homemaker and home health services, twenty-four hour intake
15 screening, volunteer and crisis home programs, day treatment and
16 any other designated community-based diagnostic, treatment or
17 rehabilitative service;

18 (2) Community-based programs and services to work with parents
19 and other family members to maintain and strengthen the family unit
20 so that the juvenile may be retained in his or her home;

21 (3) Youth service bureaus and other community-based programs
22 to divert youth from the juvenile court or to support, counsel, or
23 provide work and recreational opportunities for status offenders,

1 juvenile delinquents and other youth to help prevent delinquency;

2 (4) Projects designed to develop and implement programs
3 stressing advocacy activities aimed at improving services for and
4 protecting rights of youth affected by the juvenile justice system;

5 (5) Educational programs or supportive services designed to
6 encourage status offenders, juvenile delinquents, and other youth
7 to remain in elementary and secondary schools or in alternative
8 learning situations;

9 (6) Expanded use of professional and paraprofessional
10 personnel and volunteers to work effectively with youth;

11 (7) Youth initiated programs and outreach programs designed to
12 assist youth who otherwise would not be reached by traditional
13 youth assistance programs;

14 (8) A statewide program designed to reduce the number of
15 commitments of juveniles to any form of juvenile facility as a
16 percentage of the state juvenile population; to increase the use of
17 nonsecure community-based facilities as a percentage of total
18 commitments to juvenile facilities; and to discourage the use of
19 secure incarceration and detention; and

20 (9) Transitional programs designed to assist youth who are in
21 the custody of the state upon reaching the age of eighteen years.

22 (b) (1) The Department of Health and Human Resources shall
23 establish an individualized program of rehabilitation for each

1 status offender referred to the department and to each alleged
2 juvenile delinquent referred to the department after being allowed
3 an improvement period by the juvenile court, and for each
4 adjudicated juvenile delinquent who, after adjudication, is
5 referred to the department for investigation or treatment or whose
6 custody is vested in the department.

7 (2) Individualized program of rehabilitation shall take into
8 account the programs and services to be provided by other public or
9 private agencies or personnel which are available in the community
10 to deal with the circumstances of the particular juvenile.

11 (3) For alleged juvenile delinquents and status offenders,
12 such individualized program of rehabilitation shall be furnished to
13 the juvenile court and shall be available to counsel for the
14 juvenile; it may be modified from time to time at the direction of
15 the department or by order of the juvenile court.

16 (4) The department may develop an individualized program of
17 rehabilitation for any juvenile referred for noncustodial
18 counseling under section one hundred two, article eight of this
19 chapter, or for any other juvenile upon the request of a public or
20 private agency.

21 (c) The Department of Health and Human Resources and the
22 Division of Juvenile Services are directed to enter into
23 cooperative arrangements and agreements with each other and with

1 private agencies or with agencies of the state and its political
2 subdivisions to fulfill their respective duties under this article
3 and chapter.

4 **§49-9-103. Rehabilitative facilities for status offenders.**

5 (a) The Department of Health and Human Resources shall
6 establish and maintain one or more rehabilitative facilities to be
7 used exclusively for the lawful custody of status offenders. Each
8 such facility shall be a nonsecure facility having as its purpose
9 the rehabilitation of status offenders. Such facility shall have a
10 bed capacity for not more than twenty juveniles, and shall minimize
11 the institutional atmosphere and prepare the juvenile for
12 reintegration into the community.

13 (b) Rehabilitative programs and services shall be provided by
14 or through each such facility and may include, but not be limited
15 to, medical, educational, vocational, social and psychological
16 guidance, training, counseling, alcoholism treatment, drug
17 treatment and other rehabilitative services. The Department of
18 Health and Human Resources shall provide to each status offender
19 committed to the facility a program of treatment and services
20 consistent with the individualized program of rehabilitation
21 developed for such juvenile. In the case of any other juvenile
22 residing at the facility, the department shall provide such
23 programs and services as may be proper in the circumstances

1 including, but not limited to, any such programs or services
2 directed to be provided by the court.

3 (c) The board of education of the county in which the facility
4 is located shall provide instruction for juveniles residing at the
5 facility. Residents who can be permitted to do so shall attend
6 local schools, and instruction shall otherwise take place at the
7 facility.

8 (d) Facilities established pursuant to this section shall be
9 structured as community-based facilities.

10 **§49-9-104. The Juvenile Services Reimbursement Offender Fund.**

11 There is created within the State Treasury a special revenue
12 account designated "The Juvenile Services Status Offender Fund"
13 within and for the benefit of the Division of Juvenile Services for
14 expenses incurred in housing juvenile status offenders in need of
15 stabilization and specialized supervision due to chronic runaway
16 behavior. Moneys shall be paid into the account by the Department
17 of Health and Human Resources based upon an established per diem
18 rate. The Department of Health and Human Resources and the Division
19 of Juvenile Services shall jointly establish the per diem rate to
20 be paid into the fund by the Department of Health and Human
21 Resources for each juvenile status offender in need of
22 stabilization and specialized supervision due to chronic runaway
23 behavior housed in a Division of Juvenile Services staff secure

1 facility pursuant to this article and by cooperative agreement. The
2 Director of Juvenile Services is authorized to make expenditures
3 from the fund in accordance with article three, chapter twelve of
4 this code to offset expenses incurred by the Division of Juvenile
5 Services in housing, treatment and caring for juvenile offenders.

6 **§49-9-105. Enforcement of legal custody.**

7 The Department of Health and Human Resources shall have
8 authority to require any juvenile committed to its legal custody to
9 remain at and to return to the residence to which the juvenile is
10 assigned by the department or by the juvenile court. In aid of such
11 authority, and upon request of a designated employee of the
12 department, any police officer, sheriff, deputy sheriff, or
13 juvenile court probation officer is authorized to take any such
14 juvenile into custody and return such juvenile to his or her place
15 of residence or into the custody of a designated employee of the department.

16 **§49-9-106. Reporting requirements; cataloging of services.**

17 (a) The Department of Health and Human Resources and the
18 Division of Juvenile Services shall annually review its programs
19 and services and submit a report by December 31 of each year to the
20 Governor, the Legislature and the Supreme Court of Appeals. This
21 report shall analyze and evaluate the effectiveness of the programs
22 and services being carried out by the Department of Health and
23 Human Resources or the Division of Juvenile Services. Such report

1 shall include, but is not limited to:

2 (1) An analysis and evaluation of programs and services
3 continued, established and discontinued during the period covered
4 by the report;

5 (2) A description of programs and services which should be
6 implemented to further the purposes of this article;

7 (3) Relevant information concerning the number of juveniles
8 comprising the population of any rehabilitative facility during the
9 period covered by the report;

10 (4) The length of residence, the nature of the problems of
11 each juvenile, the juvenile's response to programs and services;
12 and

13 (5) such other information as will enable a user of the report
14 to ascertain the effectiveness of the facility as a rehabilitative
15 facility.

16 (b) The Department of Health and Human Resources and the
17 Division of Juvenile Services shall prepare a descriptive catalogue
18 of its juvenile programs and services available in local
19 communities throughout this state and shall distribute copies of
20 the same to every juvenile court in the state and, at the direction
21 of the juvenile court, such catalogue shall be distributed to
22 attorneys practicing before such court. Such catalogue shall:

23 (1) Be made available to members of the general public upon

1 request:

2 (2) Contain sufficient information as to particular programs
3 and services so as to enable a user of the catalogue to make
4 inquiries and referrals; and

5 (3) Be constructed so as to meaningfully identify and describe
6 programs and services.

7 (c) The requirements of this section are not satisfied by a
8 simple listing of specific agencies or the individuals in charge of
9 programs at a given time. The catalogue shall be updated and
10 republished or supplemented from time to time as may be required to
11 maintain its usefulness as a resource manual.

12 **ARTICLE 10. DETENTION.**

13 **§49-10-101. Review of order following detention hearing.**

14 Upon the application of any person in interest or on his or
15 her own motion, a circuit court judge may modify or vacate any
16 order entered in his or her court after a detention hearing and
17 enter such order as to detention, or release from detention, as he
18 or she deems just and proper.

19 **§49-10-102. Detention in other counties.**

20 If further detention is ordered, the circuit court judge may
21 order or direct such child to be detained in a facility other than
22 a jail in a county other than the county in which such court sits
23 if no facility other than a jail exists in the county wherein the

1 court sits.

2 **ARTICLE 11. MULTIDISCIPLINARY TEAMS.**

3 **§49-11-101. Purpose; additional cases and teams.**

4 (a) This article shall:

5 (1) Provide a system for evaluation of and coordinated service
6 delivery for children who may be victims of abuse or neglect and
7 children undergoing certain status offense and delinquency
8 proceedings;

9 (2) Establish, as a complement to other programs of the
10 Department of Health and Human Resources, a multidisciplinary
11 screening, advisory and planning system to assist courts in
12 facilitating permanency planning, following the initiation of
13 judicial proceedings, to recommend alternatives and to coordinate
14 evaluations and in-community services; and

15 (3) Ensure that children are safe from abuse and neglect and
16 to coordinate investigation of alleged child abuse offenses and
17 competent criminal prosecution of offenders to ensure that safety,
18 as determined appropriate by the prosecuting attorney.

19 (b) Nothing in this article precludes any multidisciplinary
20 team from considering any case upon the consent of the members of
21 the team.

22 **§49-11-102. Multidisciplinary investigative teams; establishment;**
23 **procedures; coordination between agencies.**

1 (a) The prosecuting attorney of a county shall establish a
2 multidisciplinary investigative team in that county. The
3 multidisciplinary team shall be headed and directed by the
4 prosecuting attorney, or his or her designee, and shall include as
5 permanent members:

6 (1) The prosecuting attorney, or his or her designee;

7 (2) A local child protective services caseworker from the
8 Department of Health and Human Resources;

9 (3) A local law-enforcement officer employed by a
10 law-enforcement agency in the county;

11 (4) A child advocacy center representative, where available;

12 (5) A health care provider with pediatric and child abuse
13 expertise, where available;

14 (6) A mental health professional with pediatric and child
15 abuse expertise, where available;

16 (7) An educator; and

17 (8) A representative from a licensed domestic violence program
18 serving the county.

19 The Department of Health and Human Resources and any local
20 law-enforcement agency or agencies selected by the prosecuting
21 attorney shall appoint their representatives to the team by
22 submitting a written designation of the team to the prosecuting
23 attorney of each county within thirty days of the prosecutor's

1 request that the appointment be made. Within fifteen days of the
2 appointment, the prosecuting attorney shall notify the chief judge
3 of each circuit within which the county is situated of the names of
4 the representatives so appointed. Any other person or any other
5 appointee of an agency who may contribute to the team's efforts to
6 assist a minor child as may be determined by the permanent members
7 of the team may also be appointed as a member of the team by the
8 prosecutor with notification to the chief judge.

9 (b) Any permanent member of the multidisciplinary
10 investigative team shall refer all cases of accidental death of any
11 child reported to their agency and all cases when a child dies
12 while in the custody of the state for investigation and review by
13 the team. The multidisciplinary investigative team shall meet at
14 regular intervals at least once every calendar month.

15 (c) The investigative team shall be responsible for
16 coordinating or cooperating in the initial and ongoing
17 investigation of all civil and criminal allegations pertinent to
18 cases involving child sexual assault, child sexual abuse, child
19 abuse and neglect and shall make a recommendation to the county
20 prosecuting attorney as to the initiation or commencement of a
21 civil petition and/or criminal prosecution.

22 (d) State, county and local agencies shall provide the
23 multidisciplinary investigative team with any information requested

1 in writing by the team as allowable by law or upon receipt of a
2 certified copy of the circuit court's order directing said agencies
3 to release information in its possession relating to the child. The
4 team shall assure that all information received and developed in
5 connection with this article remains confidential. For purposes of
6 this section, the term "confidential" shall be construed in
7 accordance with section one hundred one, article fifteen of this
8 chapter.

9 **§49-11-103. Multidisciplinary treatment planning process.**

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

21 (2) This section does not require a multidisciplinary team
22 meeting to be held prior to temporarily placing a child or juvenile
23 out-of-home under exigent circumstances or upon a court order

1 placing a juvenile in a facility operated by the Division of
2 Juvenile Services.

3 (b) The case manager in the Department of Health and Human
4 Resources for the child, family or juvenile or the case manager in
5 the Division of Juvenile Services for a juvenile shall convene a
6 treatment team in each case when it is required pursuant to this
7 article.

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

20 (2) Any person authorized by this chapter to convene a
21 multidisciplinary team meeting may seek and receive an order of the
22 circuit court setting such meeting and directing attendance.
23 Members of the multidisciplinary team may participate in team

1 meetings by telephone or video conferencing. This subsection does
2 not prevent the respective agencies from designating a person other
3 than the case manager as a facilitator for treatment team meetings.
4 Written notice shall be provided to all team members of the
5 availability to participate by videoconferencing.

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

11 (d) The multidisciplinary treatment team shall be afforded
12 access to information in the possession of the Department of Health
13 and Human Resources, Division of Juvenile Services, law-enforcement
14 agencies and other state, county and local agencies. Those
15 agencies shall cooperate in the sharing of information, as may be
16 provided for in sections one hundred three and one hundred eight of
17 this article, section one hundred one, article fifteen of this
18 chapter, and any other relevant provision of law. Any
19 multidisciplinary team member who acquires confidential information
20 shall not disclose such information except as permitted by this
21 code or court rules.

22 **§49-11-104. Recommendation of team to the court; hearing**
23 **requirement; required findings.**

1 (a) In any case in which a multidisciplinary treatment team
2 develops an individualized service plan for a child or family
3 pursuant to this article, the court shall review the proposed
4 service plan to determine if implementation of the plan is in the
5 child's best interests. If the multidisciplinary team cannot agree
6 on a plan or if the court determines not to adopt the team's
7 recommendations, it shall, upon motion or *sua sponte*, schedule and
8 hold within ten days of such determination, and prior to the entry
9 of an order placing the child in the custody of the department or
10 in an out-of-home setting, a hearing to consider evidence from the
11 team as to its rationale for the proposed service plan. If, after
12 a hearing held pursuant to this section, the court does not adopt
13 the teams's recommended service plan, it shall make specific
14 written findings as to why the team's recommended service plan was
15 not adopted.

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

20 (c) Any member of the multidisciplinary treatment team who
21 disagrees with recommendations of the team may inform the court of
22 his or her own recommendations and objections to the team's
23 recommendations. The recommendations and objections of the

1 dissenting team member may be made in a hearing on the record, made
2 in writing and served upon each team member and filed with the
3 court and indicated in the case plan, or both made in writing and
4 indicated in the case plan. Upon receiving objections, the court
5 will conduct a hearing pursuant to paragraph (a) of this section.

6 **§49-11-105. Multidisciplinary treatment planning process involving**
7 **child abuse and neglect.**

8 (a) Within thirty days of the initiation of a judicial
9 proceeding pursuant to article thirteen of this chapter, the
10 Department of Health and Human Services shall convene a
11 multidisciplinary treatment team to assess, plan and implement a
12 comprehensive, individualized service plan for children who are
13 victims of abuse or neglect and their families. The
14 multidisciplinary team shall obtain and utilize any assessments for
15 the children or the adult respondents that it deems necessary to
16 assist in the development of such a plan.

17 (b) In a case initiated pursuant to article thirteen of this
18 chapter, the treatment team shall consist of:

19 (1) The child or family's case manager in the Department of
20 Health and Human Resources;

21 (2) The adult respondent or respondents;

22 (3) The child's parent or parents, guardians, any
23 copetitioners, custodial relatives of the child, foster or

1 preadoptive parents;

2 (4) Any attorney representing an adult respondent or other
3 member of the treatment team;

4 (5) The child's counsel or the guardian ad litem;

5 (6) The prosecuting attorney or his or her designee;

6 (7) A member of a child advocacy center when the child has
7 been processed through the child advocacy center program or
8 programs or it is otherwise appropriate that a member of the child
9 advocacy center participate;

10 (8) Any court-appointed special advocate assigned to a case;

11 (9) Any other person entitled to notice and the right to be
12 heard;

13 (10) An appropriate school official; and

14 (11) Any other person or agency representative who may assist
15 in providing recommendations for the particular needs of the child
16 and family, including domestic violence service providers.

17 The child may participate in multidisciplinary treatment team
18 meetings if the child's participation is deemed appropriate by the
19 multidisciplinary treatment team. Unless otherwise ordered by the
20 court, a party whose parental rights have been terminated and his
21 or her attorney shall not be given notice of a multidisciplinary
22 treatment team meeting and does not have the right to participate
23 in any treatment team meeting.

1 (c) Prior to disposition in each case 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 the
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 with appropriate relatives then with foster care homes,
8 facilities or programs located within the state. The team may only
9 recommend placement in an out-of-state facility if it concludes,
10 after considering the best interests and overall needs of the
11 child, that there are no available and suitable in-state facilities
12 which can satisfactorily meet the specific needs of the child.

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

20 (e) If a respondent or copetitioner admits the underlying
21 allegations of child abuse or neglect, or both abuse and neglect,
22 in the multidisciplinary treatment planning process, his or her
23 statements not be used in any subsequent criminal proceeding

1 against him or her, except for perjury or false swearing.

2 **§49-11-106. Multidisciplinary treatment process for status**
3 **offenders or delinquents.**

4 (a) When a juvenile is adjudicated as a status offender
5 pursuant to section one hundred ten, article eight of this chapter,
6 the Department of Health and Human Resources shall promptly convene
7 a multidisciplinary treatment team and conduct an assessment,
8 utilizing a standard uniform comprehensive assessment instrument or
9 protocol, to determine the juvenile's mental and physical
10 condition, maturity and education level, home and family
11 environment, rehabilitative needs and recommended service plan,
12 which shall be provided in writing to the court and team members.
13 Upon completion of the assessment, the treatment team shall prepare
14 and implement a comprehensive, individualized service plan for the
15 juvenile.

16 (b) When a juvenile is adjudicated as a delinquent or has been
17 granted an improvement period pursuant to section one hundred
18 seven, article eight of this chapter, the court, either upon its
19 own motion or motion of a party, may require the Department of
20 Health and Human Resources to convene a multidisciplinary treatment
21 team and conduct an assessment, utilizing a standard uniform
22 comprehensive assessment instrument or protocol, to determine the
23 juvenile's mental and physical condition, maturity and education

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

16 (c) When a juvenile has been adjudicated and committed to the
17 custody of the Director of the Division of Juvenile Services,
18 including those cases in which the juvenile has been committed for
19 examination and diagnosis, the Division of Juvenile Services shall
20 promptly convene a multidisciplinary treatment team and conduct an
21 assessment, utilizing a standard uniform comprehensive assessment
22 instrument or protocol, to determine the juvenile's mental and
23 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, which shall be provided in writing to the court and team
5 members. In cases where the juvenile is committed as a
6 post-sentence disposition to the custody of the Division of
7 Juvenile Services, the plan shall be reviewed quarterly by the
8 multidisciplinary treatment team. Where a juvenile has been
9 detained in a facility operated by the Division of Juvenile
10 Services without an active service plan for more than sixty days,
11 the director of the facility may call a multidisciplinary team
12 meeting to review the case and discuss the status of the service
13 plan.

14 (d) (1) The rules of juvenile procedure shall govern the
15 procedure for obtaining an assessment of a juvenile, preparing an
16 individualized service plan and submitting the plan and assessment
17 to the court.

18 (2) In juvenile proceedings conducted pursuant to article
19 eight of this chapter, the treatment team shall consist of:

20 (A) The juvenile;

21 (B) The juvenile's case manager in the Department of Health
22 and Human Resources or the Division of Juvenile Services;

23 (C) The juvenile's parent or parents, guardian or guardians or

1 custodial relatives;

2 (D) The juvenile's attorney;

3 (E) Any attorney representing a member of the treatment team;

4 (F) The prosecuting attorney or his or her designee;

5 (G) An appropriate school official; and

6 (H) Any other person or agency representative who may assist

7 in providing recommendations for the particular needs of the

8 juvenile and family, including domestic violence service providers.

9 In delinquency proceedings, the probation officer shall be a

10 member of a treatment team. When appropriate, the juvenile case

11 manager in the Department of Health and Human Resources and the

12 Division of Juvenile Services shall cooperate in conducting

13 multidisciplinary treatment team meetings when it is in the

14 juvenile's best interest.

15 (3) Prior to disposition, in each case in which a treatment

16 planning team has been convened, the team shall advise the court as

17 to the types of services the team has determined are needed and

18 type of placement, if any, which will best serve the needs of the

19 child. If the team determines that an out-of-home placement will

20 best serve the needs of the child, the team shall first consider

21 placement at facilities or programs located within the state. The

22 team may only recommend placement in an out-of-state facility if it

23 concludes, after considering the best interests and overall needs

1 of the child, that there are no available and suitable in-state
2 facilities which can satisfactorily meet the specific needs of the
3 child.

4 (4) The multidisciplinary treatment team shall submit written
5 reports to the court as required by applicable law or by the court,
6 shall meet with the court at least every three months, as long as
7 the juvenile remains in the legal or physical custody of the state,
8 and shall be available for status conferences and hearings as
9 required by the court.

10 (5) In any case in which a juvenile has been placed out of his
11 or her home except for a temporary placement in a shelter or
12 detention center, the multidisciplinary treatment team shall
13 cooperate with the state agency in whose custody the juvenile is
14 placed to develop an after-care plan. The rules of juvenile
15 procedure and section one hundred twenty three, article eight of
16 this chapter govern the development of an after-care plan for a
17 juvenile, the submission of the plan to the court and any objection
18 to the after-care plan.

19 (6) If a juvenile respondent admits the underlying allegations
20 of the case initiated pursuant to article eight of this chapter, in
21 the multidisciplinary treatment planning process, his or her
22 statements shall not be used in any juvenile or criminal
23 proceedings against the juvenile, except for perjury or false swearing.

1 **§49-11-107. Report of teams.**

2 All persons directing any team created pursuant to this
3 article shall maintain records of each meeting indicating the name
4 and position of persons attending each meeting and the number of
5 cases discussed at the meeting, including a designation of whether
6 or not that case was previously discussed by any multidisciplinary
7 team. Further, all investigative teams shall maintain a log of all
8 cases to indicate the number of referrals to that team, whether or
9 not a police report was filed with the prosecuting attorney's
10 office, whether or not a petition was sought pursuant to article
11 thirteen of this chapter, or whether or not a criminal complaint
12 was issued and a case was criminally prosecuted. All treatment
13 teams shall maintain a log of all cases to indicate the basis for
14 failure to review a case for a period in excess of six months.

15 **§49-11-108. Other agencies of government required to cooperate.**

16 State, county and local agencies shall provide the
17 multidisciplinary teams with any information requested in writing
18 by the team as allowable by law or upon receipt of a certified copy
19 of the circuit court's order directing said agencies to release
20 information in its possession relating to the child. The team shall
21 assure that all information received and developed in connection
22 with this article remain confidential. For purposes of this
23 section, the term "confidential" shall be construed in accordance

1 with section one hundred one, article fifteen of this chapter.

2 **§49-11-109. Law enforcement; prosecution; interference with**
3 **performance of duties.**

4 No multidisciplinary team may take any action which, in the
5 determination of the prosecuting attorney or his or her assistant,
6 impairs the ability of the prosecuting attorney, his or her
7 assistant, or any law-enforcement officer to perform his or her
8 statutory duties.

9 **§49-11-110. Exemption from multidisciplinary team review for**
10 **emergency out-of-home placements.**

11 Notwithstanding any provision of this article to the contrary,
12 a multidisciplinary team recommendation shall not be required for
13 temporary out-of-home placement of a child in an emergency
14 circumstance or for purposes of assessment as provided by the
15 provisions of this article.

16 **ARTICLE 12. WEST VIRGINIA CHILD PROTECTIVE SERVICES ACT.**

17 **§49-12-101. Purpose and intent.**

18 (a) In pursuit of the purposes of this chapter to provide a
19 comprehensive system of child welfare throughout the state which
20 will:

21 (1) Assure to each child such care and guidance, preferably in
22 the child's home, as will serve the spiritual, emotional, mental

1 and physical welfare of the child; and

2 (2) Preserve and strengthen the family ties wherever possible,
3 while recognizing both the fundamental rights of parenthood and the
4 state's responsibility to assist the family in providing the
5 necessary training and education of all children.

6 (b) The Legislature enacts this article to provide for the
7 protection of the children of this state from abuse and neglect and
8 to provide direction to responsible state officers. This article
9 is enacted in pursuit of the purpose of this chapter and the
10 heretofore expressed intention of the Legislature to provide for
11 the removal of a child from the custody of the child's parents only
12 when the child's welfare cannot be otherwise adequately
13 safeguarded, and is enacted to secure to a child removed from the
14 family a degree of custody, care and control consistent with the
15 child's best interests and the other goals of this chapter.

16 (c) In light of this purpose, the Legislature intends to
17 provide for:

18 (1) The acceptance by the department of referrals or reports
19 of abuse or neglect, both judicial and extra judicial, voluntary or
20 involuntary, and the offering of opportunities by the department
21 whereby parents, guardians or custodians and their children may
22 avail themselves of public and private resources offering programs
23 and services which are primarily preventive and nonpunitive and

1 geared toward a rehabilitation of the home and a treatment of the
2 underlying factors which cause or tend to cause abuse and neglect;

3 (2) The vigorous and fair assessment and investigation of
4 alleged cases of child abuse or neglect to the end that no child
5 subjected to abuse or neglect shall be left without assistance
6 consistent in all respects with the purposes and goals of this
7 chapter and article;

8 (3) The thorough and professional diagnosis of cases to
9 determine whether child abuse or neglect exists, whether court
10 action is appropriate, or whether a high risk or danger to children
11 requires emergency services or the initiation of an immediate
12 response;

13 (4) An assessment of the family, family members and family
14 problems in each case, to identify strengths as well as areas for
15 improvement, and to determine how best to augment the protective
16 services functions of the department with community resources
17 available to and needed by the family, to the end that a plan can
18 be implemented whereby every abused or neglected child in the state
19 will be provided an environment for his or her custody, care and
20 control which offers as normal a family life as practicable, free
21 of abuse or neglect, preferably in the child's own home;

22 (5) In cases where removal of a child is required, but a
23 termination of parental rights is not ordered, the opportunity for

1 the family to visit and maintain family ties in the family home or
2 in home-like and other conducive surroundings, avoiding, wherever
3 possible, the austere surroundings of a public or private agency
4 with limited time and lack of privacy;

5 (6) The fulfillment of the state's responsibility to assist
6 the family in a manner consonant with the purposes of this article,
7 even in cases requiring temporary removal of the child, without
8 fear by the citizens that the state's exercise of that
9 responsibility will be unfairly used as a means of terminating
10 family ties;

11 (7) The prompt and effective termination of parental rights in
12 cases where there is an abject failure of the parents or custodians
13 to reasonably utilize fair, professionally developed and
14 communicated opportunities to end the abuse or neglect.

15 **§49-12-102. Unified child and family case plans.**

16 (a) The Department of Health and Human Resources shall develop
17 a unified child and family case plan for every family wherein a
18 person has been referred to the department after being allowed an
19 improvement period or where the child is placed in foster care. The
20 case plan must be filed within sixty days of the child coming into
21 foster care or within thirty days of the inception of the
22 improvement period, whichever occurs first. The department may
23 also prepare a case plan for any person who voluntarily seeks child

1 abuse and neglect services from the department, or who is referred
2 to the department by another public agency or private organization.
3 The case plan provisions shall comply with federal law and the
4 rules of procedure for child abuse and neglect proceedings.

5 (b) The department shall convene a multidisciplinary treatment
6 team, which shall develop the case plan. Parents, guardians or
7 custodians shall participate fully in the development of the case
8 plan, and the child shall also fully participate if sufficiently
9 mature and the child's participation is otherwise appropriate. The
10 case plan may be modified from time to time to allow for
11 flexibility in goal development, and in each such case the
12 modifications shall be submitted to the court in writing.
13 Reasonable efforts to place a child for adoption or with a legal
14 guardian may be made at the same time as reasonable efforts are
15 being made to prevent removal or to make it possible for a child to
16 return safely home. The court shall examine the proposed case plan
17 or any modification thereof, and upon a finding by the court that
18 the plan or modified plan can be easily communicated, explained and
19 discussed so as to make the participants accountable and able to
20 understand the reasons for any success or failure under the plan,
21 the court shall inform the participants of the probable action of
22 the court if goals are met or not met.

23 (c) In furtherance of the provisions of this article, the

1 department shall, within the limits of available funds, establish
2 programs and services for the following purposes:

3 (1) For the development and establishment of training programs
4 for professional and paraprofessional personnel in the fields of
5 medicine, law, education, social work and other relevant fields who
6 are engaged in, or intend to work in, the field of the prevention,
7 identification and treatment of child abuse and neglect; and
8 training programs for children, and for persons responsible for the
9 welfare of children, in methods of protecting children from child
10 abuse and neglect;

11 (2) For the establishment and maintenance of centers, serving
12 defined geographic areas, staffed by multidisciplinary teams and
13 community teams of personnel trained in the prevention,
14 identification and treatment of child abuse and neglect cases, to
15 provide a broad range of services related to child abuse and
16 neglect, including direct support as well as providing advice and
17 consultation to individuals, agencies and organizations which
18 request such services;

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

23 (4) For other innovative programs and projects that show

1 promise of successfully identifying, preventing or remedying the
2 causes of child abuse and neglect, including, but not limited to,
3 programs and services designed to improve and maintain parenting
4 skills, programs and projects for parent self help, and for
5 prevention and treatment of drug-related child abuse and neglect;
6 and

7 (5) Assisting public agencies or nonprofit private
8 organizations or combinations thereof in making applications for
9 grants from, or in entering into contracts with, the federal
10 Secretary of the Department of Health and Human Services for
11 demonstration programs and projects designed to identify, prevent
12 and treat child abuse and neglect.

13 (d) Agencies, organizations and programs funded to carry out
14 the purposes of this section shall be structured so as to comply
15 with any applicable federal law, any regulation of the federal
16 Department of Health and Human Services or its secretary, and any
17 final comprehensive plan of the federal advisory board on child
18 abuse and neglect. In funding organizations, the department shall,
19 to the extent feasible, ensure that parental organizations
20 combating child abuse and neglect receive preferential treatment.

21 **ARTICLE 13. PROCEDURES IN CASES OF CHILD NEGLECT OR ABUSE.**

22 **§49-13-101. Petition to court when child believed neglected or**
23 **abused.**

1 (a) Petitioner and Venue. -- If the department or a reputable
2 person believes that a child is neglected or abused, the department
3 or the person may present a petition setting forth the facts to the
4 circuit court in the county in which the child resides, or if the
5 petition is being brought by the department, in the county in which
6 the custodial respondent or other named party abuser resides, or in
7 which the abuse or neglect occurred, or to the judge of the court
8 in vacation. Under no circumstance may a party file a petition in
9 more than one county based on the same set of facts.

10 (b) Contents of Petition. -- The petition shall be verified
11 by the oath of some credible person having knowledge of the facts.
12 The petition shall allege specific conduct including time and
13 place, how such conduct comes within the statutory definition of
14 neglect or abuse with references thereto, any supportive services
15 provided by the department to remedy the alleged circumstances and
16 the relief sought.

17 (c) Court Action Upon Filing of Petition. -- Upon filing of
18 the petition, the court shall set a time and place for a hearing
19 and shall appoint counsel for the child. When there is an order for
20 temporary custody pursuant to this article, the preliminary hearing
21 shall be held within ten days of the order continuing or
22 transferring custody, unless a continuance for a reasonable time is
23 granted to a date certain, for good cause shown.

1 (d) Department Action Upon Filing of the Petition. -- At the
2 time of the institution of any proceeding under this article, the
3 department shall provide supportive services in an effort to remedy
4 circumstances detrimental to a child.

5 (e) Notice of Hearing. --

6 (1) The petition and notice of the hearing shall be served
7 upon both parents and any other custodian, giving to the parents or
8 custodian giving to the parents or custodian at least five days'
9 actual notice of a preliminary hearing and at least ten days'
10 notice of any other hearing at least ten days' notice.

11 (2) Notice shall be given to the department, any foster or
12 preadoptive parent, and any relative providing care for the child.

13 (3) In cases where personal service within West Virginia
14 cannot be obtained after due diligence upon any parent or other
15 custodian, a copy of the petition and notice of the hearing shall
16 be mailed to the person by certified mail, addressee only, return
17 receipt requested, to the last known address of such person. If the
18 person signs the certificate, service shall be complete and the
19 certificate shall be filed as proof of the service with the clerk
20 of the circuit court.

21 (4) If service cannot be obtained by personal service or by
22 certified mail, notice shall be by publication as a Class II legal
23 advertisement in compliance with article three, chapter fifty-nine

1 of this code.

2 (5) A notice of hearing shall specify the time and place of
3 the hearing, the right to counsel of the child and parents or other
4 custodians at every stage of the proceedings and the fact that the
5 proceedings can result in the permanent termination of the parental
6 rights.

7 (6) Failure to object to defects in the petition and notice
8 shall not be construed as a waiver.

9 (f) Right to Counsel. --

10 (1) In any proceeding under this article, the child, his or
11 her or parents and his or her legally established custodian or
12 other persons standing in loco parentis to him or her shall have
13 the right to be represented by counsel at every stage of the
14 proceedings and shall be informed by the court of their right to be
15 so represented and that if they cannot pay for the services of
16 counsel, that counsel will be appointed.

17 (2) Counsel shall be appointed in the initial order. For
18 parents, legal guardians, and other persons standing in loco
19 parentis, such representation shall only continue after the first
20 appearance if the parent or other persons standing in loco parentis
21 cannot pay for the services of counsel.

22 (3) Counsel for other parties shall only be appointed upon
23 request for appointment of counsel. If the requesting parties have

1 not retained counsel and cannot pay for the services of counsel,
2 the court shall, by order entered of record, appoint an attorney or
3 attorneys to represent the other party or parties and so inform the
4 parties.

5 (4) Under no circumstances may the same attorney represent
6 both the child and the other party or parties, nor shall the same
7 attorney represent both parents or custodians. However, one
8 attorney may represent both parents or custodians where both
9 parents or guardians consent to this representation after the
10 attorney fully discloses to the client the possible conflict and
11 where the attorney assures the court that she or he is able to
12 represent each client without impairing her or his professional
13 judgment; however, if more than one child from a family is involved
14 in the proceeding, one attorney may represent all the children.

15 (5) A parent who is a copetitioner or has been judicially
16 determined to be battered shall be entitled to his or her own
17 attorney. The court may allow to each attorney so appointed a fee
18 in the same amount which appointed counsel can receive in felony
19 cases.

20 (g) Continuing Education for Counsel. -- Any attorney
21 appointed pursuant to this section shall receive a minimum of eight
22 hours of continuing legal education training per reporting period
23 on child abuse and neglect procedure and practice. In addition to

1 this requirement, any attorney appointed to represent a child must
2 first complete training on representation of children that is
3 approved by the administrative office of the Supreme Court of
4 Appeals. The Supreme Court of Appeals shall develop procedures for
5 approval and certification of training required under this section.
6 Where no attorney has completed the training required by this
7 subsection, the court shall appoint a competent attorney with
8 demonstrated knowledge of child welfare law to represent the parent
9 or child. Any attorney appointed pursuant to this section shall
10 perform all duties required of an attorney licensed to practice law
11 in the State of West Virginia.

12 (h) *Right to be Heard.* -- In any proceeding pursuant to this
13 article, the party or parties having custodial or other parental
14 rights or responsibilities to the child shall be afforded a
15 meaningful opportunity to be heard, including the opportunity to
16 testify and to present and cross-examine witnesses. Foster parents,
17 preadoptive parents, and relative caregivers shall also have a
18 meaningful opportunity to be heard.

19 (i) *Findings of the Court.* -- Where relevant, the court shall
20 consider the efforts of the department to remedy the alleged
21 circumstances. At the conclusion of the hearing, the court shall
22 make a determination based upon the evidence and shall make
23 findings of fact and conclusions of law as to whether such child is

1 abused or neglected and, if applicable, whether the parent,
2 guardian, or custodian is a battered parent, all of which shall be
3 incorporated into the order of the court. The findings must be
4 based upon conditions existing at the time of the filing of the
5 petition and proven by clear and convincing evidence.

6 (j) Priority of Proceedings. -- Any petition filed and any
7 proceeding held under this article shall, to the extent
8 practicable, be given priority over any other civil action before
9 the court, except proceedings under article two-a, chapter
10 forty-eight of this code and actions in which trial is in progress.
11 Any petition filed under this article shall be docketed immediately
12 upon filing. Any hearing to be held at the end of an improvement
13 period and any other hearing to be held during any proceedings
14 under this article shall be held as nearly as practicable on
15 successive days and, with respect to said hearing to be held at the
16 end of an improvement period, shall be held as close in time as
17 possible after the end of said improvement period and shall be held
18 within sixty days of the termination of such improvement period.

19 (k) Procedural Safeguards. -- The petition shall not be taken
20 as confessed. A transcript or recording shall be made of all
21 proceedings unless waived by all parties to the proceeding. The
22 rules of evidence shall apply. Following the court's
23 determination, it shall be inquired of the parents or custodians

1 whether or not appeal is desired and the response transcribed. A
2 negative response shall not be construed as a waiver. The evidence
3 shall be transcribed and made available to the parties or their
4 counsel as soon as practicable, if the same is required for
5 purposes of further proceedings. If an indigent person intends to
6 pursue further proceedings, the court reporter shall furnish a
7 transcript of the hearing without cost to the indigent person if an
8 affidavit is filed stating that he or she cannot pay therefor.

9 **§49-13-102. Petition to court when child believed neglected or**
10 **abused; temporary care, custody, and control of**
11 **child at different stages of proceeding.**

12 (a) (1) Temporary Care, Custody, and Control Upon Filing of
13 the Petition. -- Upon the filing of a petition, the court may order
14 that the child alleged to be an abused or neglected child be
15 delivered for not more than ten days into the care, custody, and
16 control of the department or a responsible person who is not the
17 custodial parent or guardian of the child, if it finds that:

18 (A) There exists imminent danger to the physical well-being of
19 the child; and

20 (B) There are no reasonably available alternatives to removal
21 of the child, including, but not limited to, the provision of
22 medical, psychiatric, psychological or homemaking services in the
23 child's present custody.

1 (2) Where the alleged abusing person, if known, is a member of
2 a household, the court shall not allow placement pursuant to this
3 section of the child or children in said home unless the alleged
4 abusing person is or has been precluded from visiting or residing
5 in said home by judicial order.

6 (3) In a case where there is more than one child in the home,
7 or in the temporary care, custody or control of the alleged
8 offending parent, the petition shall so state. Notwithstanding the
9 fact that the allegations of abuse or neglect may pertain to less
10 than all of such children, each child in the home for whom relief
11 is sought shall be made a party to the proceeding. Even though the
12 acts of abuse or neglect alleged in the petition were not directed
13 against a specific child who is named in the petition, the court
14 shall order the removal of such child, pending final disposition,
15 if it finds that there exists imminent danger to the physical
16 well-being of the child and a lack of reasonable available
17 alternatives to removal.

18 (4) The initial order directing such custody shall contain an
19 order appointing counsel and scheduling the preliminary hearing,
20 and upon its service shall require the immediate transfer of care,
21 custody, and control of such child or children to the department or
22 a responsible relative, which may include any parent, guardian, or
23 other custodian. The court order shall state:

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

3 (B) Whether or not the department made reasonable efforts to
4 preserve the family and prevent the placement or that the emergency
5 situation made such efforts unreasonable or impossible. The order
6 may also direct any party or the department to initiate or become
7 involved in services to facilitate reunification of the family.

8 (b) *Temporary Care, Custody, and Control at Preliminary*
9 *Hearing.* -- Whether or not the court orders immediate transfer of
10 custody as provided in subsection (a) of this section, if the facts
11 alleged in the petition demonstrate to the court that there exists
12 imminent danger to the child, the court may schedule a preliminary
13 hearing giving the respondents at least five days' actual notice.
14 If the court finds at the preliminary hearing that there are no
15 alternatives less drastic than removal of the child and that a
16 hearing on the petition cannot be scheduled in the interim period,
17 the court may order that the child be delivered into the temporary
18 care, custody, and control of the department or a responsible
19 person or agency found by the court to be a fit and proper person
20 for the temporary care of the child for a period not exceeding
21 sixty days. The court order shall state:

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

1 (2) Whether or not the department made reasonable efforts to
2 preserve the family and to prevent the child's removal from his or
3 her home;

4 (3) Whether or not the department made reasonable efforts to
5 preserve the family and to prevent the placement or that the
6 emergency situation made such efforts unreasonable or impossible;
7 and

8 (4) What efforts should be made by the department, if any, to
9 facilitate the child's return home. If the court grants an
10 improvement period as provided in section one hundred fourteen of
11 this article, the sixty-day limit upon temporary custody is waived.

12 (c) *Emergency Removal By Department Before Filing of Petition.*
13 -- Prior to the filing of a petition, a protective service worker
14 may take the child or children into his or her custody (also known
15 as removing the child) without a court order when:

16 (1) In the presence of a child protective service worker a
17 child or children are in an emergency situation which constitutes
18 an imminent danger to the physical well-being of the child or
19 children, as that phrase is defined in section two hundred one,
20 article one of this chapter; and

21 (2) The worker has probable cause to believe that the child or
22 children will suffer additional child abuse or neglect or will be
23 removed from the county before a petition can be filed and

1 temporary custody can be ordered.

2 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 referee of the county where custody was taken and
5 immediately apply for an order. If no such judge or referee is
6 available, the worker shall appear before a circuit judge or
7 referee of an adjoining county, and immediately apply for an order.
8 This order shall ratify the emergency custody of the child pending
9 the filing of a petition.

10 The circuit court of every county in the state shall appoint
11 at least one of the magistrates of the county to act as a referee.
12 He or she shall serve at the will and pleasure of the appointing
13 court, and shall perform the functions prescribed for such position
14 by this subsection.

15 The parents, guardians or custodians of the child or children
16 may be present at the time and place of application for an order
17 ratifying custody. If at the time the child or children are taken
18 into custody by the worker he or she knows which judge or referee
19 is to receive the application, the worker shall so inform the
20 parents, guardians or custodians.

21 The application for emergency custody may be on forms
22 prescribed by the Supreme Court of Appeals or prepared by the
23 prosecuting attorney or the applicant, and shall set forth facts

1 from which it may be determined that the probable cause described
2 above in this subsection exists. Upon such sworn testimony or other
3 evidence as the judge or referee deems sufficient, the judge or
4 referee may order the emergency taking by the worker to be
5 ratified. If appropriate under the circumstances, the order may
6 include authorization for an examination as provided in subsection
7 (b), section one hundred three of this article.

8 If a referee issues such an order, the referee shall by
9 telephonic communication have such order orally confirmed by a
10 circuit judge of the circuit or an adjoining circuit who shall on
11 the next judicial day enter an order of confirmation. If the
12 emergency taking is ratified by the judge or referee, emergency
13 custody of the child or children shall be vested in the department
14 until the expiration of the next two judicial days, at which time
15 any such child taken into emergency custody shall be returned to
16 the custody of his or her parent or guardian or custodian unless a
17 petition has been filed and custody of the child has been
18 transferred under section three of this article.

19 (d) *Emergency Removal by Department During Pendency of Case.*
20 -- Regardless of whether the court has previously granted the
21 department care, custody, and custody of a child, if the department
22 takes physical custody of a child during the pendency of a child
23 abuse and neglect case (also known as removing the child) due to a

1 change in circumstances and without a court order issued at the
2 time of the removal, the department must immediately notify the
3 court and a hearing shall take place within ten days to determine
4 if there is imminent danger to the physical well-being of the
5 child, and there is no reasonably available alternative to removal
6 of the child. The court findings and order shall be consistent
7 with subsections (a) and (b) of this section.

8 (e) *Situations When Reasonable Efforts to Preserve the Family*
9 *are Not Required.* -- For purposes of the court's consideration of
10 temporary custody pursuant to subsection (a), (b), (c) or (d) of
11 this section, the department is not required to make reasonable
12 efforts to preserve the family if the court determines:

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

18 (2) The parent has:

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

23 (B) Committed voluntary manslaughter of the child's other

1 parent, guardian or custodian, another child of the parent or any
2 other child residing in the same household or under the temporary
3 or permanent custody of the parent;

4 (C) Attempted or conspired to commit such a murder or
5 voluntary manslaughter or been an accessory before or after the
6 fact to either such crime;

7 (D) Committed unlawful or malicious wounding that results in
8 serious bodily injury to the child, the child's other parent,
9 guardian or custodian, to another child of the parent or any other
10 child residing in the same household or under the temporary or
11 permanent custody of the parent;

12 (E) Committed sexual assault or sexual abuse of the child, the
13 child's other parent, guardian or custodian, another child of the
14 parent or any other child residing in the same household or under
15 the temporary or permanent custody of the parent; or

16 (F) Has been required by state or federal law to register with
17 a sex offender registry; or

18 (3) The parental rights of the parent to another child have
19 been terminated involuntarily.

20 **§49-13-103. Medical and mental examinations.**

21 (a) (1) At any time during proceedings under this article the
22 court may, upon its own motion or upon motion of the child or other
23 parties, order the child or other parties to be examined by a

1 physician, psychologist or psychiatrist, and may require testimony
2 from such expert, subject to cross-examination and the rules of
3 evidence.

4 (2) The court shall not terminate parental or custodial rights
5 of a party solely because the party refuses to submit to the
6 examination, nor shall the court hold such party in contempt for
7 refusing to submit to an examination.

8 (3) The physician, psychologist or psychiatrist shall be
9 allowed to testify as to the conclusions reached from hospital,
10 medical, psychological or laboratory records provided the same are
11 produced at the hearing.

12 (4) If the child, parent or custodian is indigent, such
13 witnesses shall be compensated out of the Treasury of the State,
14 upon certificate of the court wherein the case is pending.

15 (5) No evidence acquired as a result of any such examination
16 of the parent or any other person having custody of the child may
17 be used against such person in any subsequent criminal proceedings
18 against such person.

19 (b) (1) If a person with authority to file a petition under
20 this article shall have probable cause to believe that evidence
21 exists that a child has been abused or neglected and that such
22 evidence may be found by a medical examination, the person may
23 apply to a circuit judge or juvenile referee for an order to take

1 such child into custody for delivery to a physician or hospital for
2 examination.

3 (2) The application may be on forms prescribed by the Supreme
4 Court of Appeals or prepared by the prosecuting attorney or the
5 applicant, and shall set forth facts from which it may be
6 determined that probable cause exists for such belief.

7 (3) Upon such sworn testimony or other evidence as the judge
8 or referee deems sufficient, the judge or referee may order any
9 law-enforcement officer to take the child into custody and deliver
10 the child to a physician or hospital for examination.

11 (4) If a referee issues such an order the referee shall by
12 telephonic communication have such order orally confirmed by a
13 circuit judge of the circuit or an adjoining circuit who shall on
14 the next judicial day enter an order of confirmation.

15 (5) Any child welfare worker and the child's parents,
16 guardians or custodians may accompany the officer for such
17 examination.

18 (6) After the examination the officer may return the child to
19 the custody of his or her parent, guardian or custodian, retain
20 custody of the child or deliver custody to the state department
21 until the end of the next judicial day, at which time the child
22 shall be returned to the custody of his or her parent, guardian or
23 custodian unless a petition has been filed and custody of the child

1 has been transferred to the department under section one hundred
2 one of this article.

3 **§49-13-104. Disposition of neglected or abused children.**

4 (a) *Child and Family Case Plans.* -- Following a determination
5 pursuant to section one hundred one of this article wherein the
6 court finds a child to be abused or neglected, the department shall
7 file with the court a copy of the child's case plan, including the
8 permanency plan for the child. The term "case plan" means a written
9 document that includes, where applicable, the requirements of the
10 family case plan as provided in section one hundred two, article
11 twelve of this chapter and that also includes, at a minimum, the
12 following:

13 (1) A description of the type of home or institution in which
14 the child is to be placed, including a discussion of the
15 appropriateness of the placement and how the agency which is
16 responsible for the child plans to assure that the child receives
17 proper care and that services are provided to the parents, child,
18 and foster parents in order to improve the conditions that made the
19 child unsafe in the care of his or her parent(s);

20 (2) A plan to facilitate the return of the child to his or her
21 own home or the concurrent permanent placement of the child; and
22 address the needs of the child while in relative or foster care,
23 including a discussion of the appropriateness of the services that

1 have been provided to the child.

2 The term "permanency plan" refers to that part of the case
3 plan which is designed to achieve a permanent home for the child in
4 the least restrictive setting available. The plan must document
5 efforts to ensure that the child is returned home within
6 approximate time lines for reunification as set out in the plan.
7 Reasonable efforts to place a child for adoption or with a legal
8 guardian should be made at the same time, or concurrent with,
9 reasonable efforts to prevent removal or to make it possible for a
10 child to return to the care of his or her parent(s) safely. If
11 reunification is not the permanency plan for the child, the plan
12 must state why reunification is not appropriate and detail the
13 alternative, concurrent permanent placement plans for the child to
14 include approximate time lines for when such placement is expected
15 to become a permanent placement. This case plan shall serve as the
16 family case plan for parents of abused or neglected children.
17 Copies of the child's case plan shall be sent to the child's
18 attorney and parent, guardian or custodian or their counsel at
19 least five days prior to the dispositional hearing. The court shall
20 forthwith proceed to disposition giving both the petitioner and
21 respondents an opportunity to be heard.

22 (b) *Disposition Decisions.* -- The court shall give precedence
23 to dispositions in the following sequence:

1 (1) Dismiss the petition;

2 (2) Refer the child, the abusing parent, the battered parent
3 or other family members to a community agency for needed assistance
4 and dismiss the petition;

5 (3) Return the child to his or her own home under supervision
6 of the department;

7 (4) Order terms of supervision calculated to assist the child
8 and any abusing parent or battered parent or parents or custodian
9 which prescribe the manner of supervision and care of the child and
10 which are within the ability of any parent or parents or custodian
11 to perform;

12 (5) Upon a finding that the abusing parent or battered parent
13 or parents are presently unwilling or unable to provide adequately
14 for the child's needs, commit the child temporarily to the care,
15 custody, and control of the state department, a licensed private
16 child welfare agency, or a suitable person who may be appointed
17 guardian by the court. The court order shall state:

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

20 (B) Whether or not the department has 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 or
23 eliminate the need for removing the child from the child's home and

1 to make it possible for the child to safely return home;

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

4 (D) The specific circumstances of the situation which made
5 such efforts unreasonable if services were not offered by the
6 department. The court order shall also determine under what
7 circumstances the child's commitment to the department shall
8 continue. Considerations pertinent to the determination include
9 whether the child should:

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

11 (ii) Be considered for adoption;

12 (iii) Be considered for legal guardianship;

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

15 (v) Be placed in another planned permanent living arrangement,
16 but only in cases where the department has documented to the
17 circuit court a compelling reason for determining that it would not
18 be in the best interests of the child to follow one of the options
19 set forth in subparagraphs (i), (ii), (iii) or (iv) of this
20 paragraph. The court may order services to meet the special needs
21 of the child. Whenever the court transfers custody of a youth to
22 the department, an appropriate order of financial support by the
23 parents or guardians shall be entered in accordance with article

1 sixteen of this chapter; and

2 (6) Upon a finding that there is no reasonable likelihood that
3 the conditions of neglect or abuse can be substantially corrected
4 in the near future and, when necessary for the welfare of the
5 child, terminate the parental, custodial and guardianship rights
6 and responsibilities of the abusing parent and commit the child to
7 the permanent sole custody of the nonabusing parent, if there be
8 one, or, if not, to either the permanent guardianship of the
9 department or a licensed child welfare agency. The court may award
10 sole custody of the child to a nonabusing battered parent. If the
11 court shall so find, then in fixing its dispositional order the
12 court shall consider the following factors:

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

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

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

17 Notwithstanding any other provision of this article, the court
18 shall give consideration to the wishes of a child fourteen years of
19 age or older or otherwise of an age of discretion as determined by
20 the court regarding the permanent termination of parental rights.
21 No adoption of a child shall take place until all proceedings for
22 termination of parental rights under this article and appeals
23 thereof are final. In determining whether or not parental rights

1 should be terminated, the court shall consider the efforts made by
2 the department to provide remedial and reunification services to
3 the parent. The court order shall state:

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

6 (ii) Why reunification is not in the best interests of the
7 child;

8 (iii) Whether or not the department made reasonable efforts,
9 with the child's health and safety being the paramount concern, to
10 preserve the family, or some portion thereof, and to prevent the
11 placement or to eliminate the need for removing the child from the
12 child's home and to make it possible for the child to safely return
13 home, or that the emergency situation made such efforts
14 unreasonable or impossible; and

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

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

23 (A) The parent has subjected the child, another child of the

1 parent or any other child residing in the same household or under
2 the temporary or permanent custody of the parent to aggravated
3 circumstances which include, but are not limited to, abandonment,
4 torture, chronic abuse and sexual abuse;

5 (B) The parent has:

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

10 (ii) Committed voluntary manslaughter of the child's other
11 parent, guardian or custodian, another child of the parent or any
12 other child residing in the same household or under the temporary
13 or permanent custody of the parent;

14 (iii) Attempted or conspired to commit such a murder or
15 voluntary manslaughter or been an accessory before or after the
16 fact to either such crime;

17 (iv) Committed a felonious assault that results in serious
18 bodily injury to the child, the child's other parent, guardian or
19 custodian, to another child of the parent or any other child
20 residing in the same household or under the temporary or permanent
21 custody of the parent; or

22 (v) Committed sexual assault or sexual abuse of the child, the
23 child's other parent, guardian or custodian, another child of the

1 parent or any other child residing in the same household or under
2 the temporary or permanent custody of the parent; or

3 (vi) Has been required by state or federal law to register
4 with a sex offender registry; or

5 (C) The parental rights of the parent to another child have
6 been terminated involuntarily; or

7 (D) A parent has been required by state or federal law to
8 register with a sex offender registry, and the court has determined
9 in consideration of the nature and circumstances surrounding the
10 prior charges against that parent, that the child's interests would
11 not be promoted by a preservation of the family.

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

19 (1) The abusing parent or parents have habitually abused or
20 are addicted to alcohol, controlled substances or drugs, to the
21 extent that proper parenting skills have been seriously impaired
22 and such person or persons have not responded to or followed
23 through the recommended and appropriate treatment which could have

1 improved the capacity for adequate parental functioning;

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

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

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

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

21 (6) The abusing parent or parents have incurred emotional
22 illness, mental illness or mental deficiency of such duration or
23 nature as to render such parent or parents incapable of exercising

1 proper parenting skills or sufficiently improving the adequacy of
2 such skills; or

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

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

18 **§49-13-105. When department efforts to terminate parental rights**
19 **are required.**

20 (a) Except as provided in subsection (b) of this section, the
21 department shall file or join in a petition or otherwise seek a
22 ruling in any pending proceeding to terminate parental rights:

23 (1) If a child has been in foster care for fifteen of the most

1 recent twenty-two months as determined by the earlier of the date
2 of the first judicial finding that the child is subjected to abuse
3 or neglect or the date which is sixty days after the child is
4 removed from the home;

5 (2) If a court has determined the child is abandoned; or

6 (3) If a court has determined the parent has committed murder
7 or voluntary manslaughter of another of his or her children or the
8 other parent of his or her children; has attempted or conspired to
9 commit such murder or voluntary manslaughter or has been an
10 accessory before or after the fact of either crime; has committed
11 unlawful or malicious wounding resulting in serious bodily injury
12 to the child or to another of his or her children or to the other
13 parent of his or her children; or the parental rights of the parent
14 to a sibling have been terminated involuntarily.

15 (b) The department may determine not to file a petition to
16 terminate parental rights when:

17 (1) At the option of the department, the child has been placed
18 permanently with a relative by court order;

19 (2) The department has documented in the case plan made
20 available for court review a compelling reason, including, but not
21 limited to, the child's age and preference regarding termination or
22 the child's placement in custody of the department based on any
23 proceedings initiated under article eight of this chapter, that

1 filing the petition would not be in the best interests of the
2 child; or

3 (3) The department has not provided, when reasonable efforts
4 to return a child to the family are required, the services to the
5 child's family as the department deems necessary for the safe
6 return of the child to the home.

7 **§49-13-106. Modification of dispositional orders.**

8 (a) Upon motion of a child, a child's parent or custodian or
9 the department alleging a change of circumstances requiring a
10 different disposition, the court shall conduct a hearing pursuant
11 to section one hundred one of this article and may modify a
12 dispositional order if the court finds by clear and convincing
13 evidence a material change of circumstances and that such
14 modification is in the child's best interests. A dispositional
15 order pursuant to article eight of this chapter shall not be
16 modified after the child has been adopted, except as provided in
17 subsections (b) and (c) of this section. Adequate and timely notice
18 of any motion for modification shall be given to the child's
19 counsel, counsel for the child's parent or custodian, the
20 department and any person entitled to notice and the right to be
21 heard. The circuit court of origin has exclusive jurisdiction over
22 placement of the child, and such placement shall not be disrupted
23 or delayed by any administrative process of the department.

1 (b) If the child is removed or relinquished from an adoptive
2 home or other permanent placement after the case has been
3 dismissed, any party with notice thereof and the receiving agency
4 shall promptly report the matter to the circuit court of origin,
5 the department and the child's counsel, and the court shall
6 schedule a permanency hearing within sixty days of the report to
7 the circuit court, with notice given to any appropriate parties and
8 persons entitled to notice and the right to be heard. The
9 department shall convene a multidisciplinary treatment team meeting
10 within thirty days of the receipt of notice of permanent placement
11 disruption.

12 (c) If a child has not been adopted, the child or department
13 may move the court to place the child with a parent or custodian
14 whose rights have been terminated and/or restore such parent's or
15 guardian's rights. Under these circumstances, the court may order
16 such placement and/or restoration of a parent's or guardian's
17 rights if it finds by clear and convincing evidence a material
18 change of circumstances and that such placement and/or restoration
19 is in the child's best interests.

20 **§49-13-107. Consensual termination of parental rights.**

21 An agreement of a natural parent in termination of parental
22 rights shall be valid if made by a duly acknowledged writing, and
23 entered into under circumstances free from duress and fraud. Where

1 during the pendency of an abuse and neglect proceeding, a parent
2 offers voluntarily relinquish of his or her parental rights, and
3 such relinquishment is accepted by the circuit court, the
4 relinquishment may, without further evidence, be used as the basis
5 of an order of adjudication of abuse and neglect by that parent of
6 his or her children.

7 **§49-13-108. Permanency hearing and permanent placement review.**

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

16 (b) Permanency hearing every twelve months until permanency is
17 achieved. -- If, twelve months after receipt by the department or
18 its authorized agent of physical care, custody, and control of a
19 child either by a court-ordered placement or by a voluntary
20 agreement, the department has not placed a child in an adoptive
21 home; placed the child with a natural parent, placed the child in
22 legal guardianship, or permanently placed the child with a fit and
23 willing relative, the court shall hold a permanency hearing. The

1 department shall file a progress report with the court detailing
2 the efforts that have been made to place the child in a permanent
3 home and copies of the child's case plan, including the permanency
4 plan as defined in section one hundred four of this article. Copies
5 of the report shall be sent to the parties and all persons entitled
6 to notice and the right to be heard. The court shall schedule a
7 hearing, giving notice and the right to be present to the child's
8 attorney; the child; the child's parents; the child's guardians;
9 the child's foster parents; any preadoptive parent or any relative
10 providing care for the child; any person entitled to notice and the
11 right to be heard; and such other persons as the court may, in its
12 discretion, direct. The child's presence may be waived by the
13 child's attorney at the request of the child or if the child is
14 younger than twelve years and would suffer emotional harm. The
15 purpose of the hearing is to review the child's case, to determine
16 whether and under what conditions the child's commitment to the
17 department shall continue and to determine what efforts are
18 necessary to provide the child with a permanent home. The court
19 shall conduct another permanency hearing within twelve months
20 thereafter for each child who remains in the care, custody, and
21 control of the department until the child is placed in an adoptive
22 home, returned to his or her parents, placed in legal guardianship,
23 or permanently placed with a fit and willing relative.

1 (c) Transitional Planning for Older Children. -- In the case
2 of a child who has attained sixteen years of age, the court shall
3 determine the services needed to assist the child to make the
4 transition from foster care to independent living. The child's
5 case plan should specify services aimed at transitioning the child
6 into adulthood. When a child turns seventeen, or as soon as a child
7 aged seventeen comes into a case, the department must immediately
8 provide the child with assistance and support in developing a
9 transition plan that is personalized at the direction of the child.
10 The plan must include specific options on housing, health
11 insurance, education, local opportunities for mentors, continuing
12 support services, work force support, and employment services, and
13 the plan should be as detailed as the child may elect. In addition
14 to these requirements, when a child with special needs turns
15 seventeen, or as soon as a child aged seventeen with special needs
16 comes into a case, he or she is entitled to the appointment of a
17 department adult services worker to the multidisciplinary treatment
18 team and coordination between the multidisciplinary treatment team
19 and other transition planning teams, such as special education
20 individualized education planning (IEP) teams.

21 (d) Out-of-state placements. -- In any case in which the
22 court decides to order the child placed in an out-of-state facility
23 or program it shall set forth in the order directing the placement

1 the reasons why the child was not placed in an in-state facility or
2 program. If the child is to be placed with relative or other
3 responsible person out of state, the court shall use judicial
4 leadership to help expedite the process under the Interstate
5 Compact for the Placement of Children provided in article six of
6 this chapter and the Uniform Child Custody Jurisdiction and
7 Enforcement Act provided in article twenty, chapter forty-eight of
8 this code.

9 (e) Findings in Order. --At the conclusion of the hearing the
10 court shall, in accordance with the best interests of the child,
11 enter an order containing all such appropriate findings. The court
12 order shall state:

13 (1) Whether or not the department made reasonable efforts to
14 preserve the family and to prevent out-of-home placement or that
15 the specific situation made such effort unreasonable;

16 (2) Whether or not the department made reasonable efforts to
17 finalize the permanency plan and concurrent plan for the child;

18 (3) The appropriateness of the child's current placement,
19 including its distance from the child's home and whether or not it
20 is the least restrictive one (most family-like one) available;

21 (4) The appropriateness of the current educational setting and
22 the proximity to the school in which the child is enrolled at the
23 time of placement; and

1 (5) Services required to meet the child's needs and achieve
2 permanency.

3 (f) The department shall annually report to the court the
4 current status of the placements of children in the care, custody
5 and control of the state department who have not been adopted.

6 (g) The department shall file a report with the court in any
7 case where any child in the custody of the state receives more than
8 three placements in one year no later than thirty days after the
9 third placement. This report shall be provided to all parties and
10 persons entitled to notice and the right to be heard. Upon motion
11 by any party, the court shall review these placements and determine
12 what efforts are necessary to provide the child with a permanent
13 home. No report shall be provided to any parent or parent's
14 attorney whose parental rights have been terminated pursuant to
15 this article.

16 (h) The department shall notify, in writing, the court, the
17 child, the child's attorney, the parents and the parents' attorney
18 forty-eight hours prior to the move if this is a planned move, or
19 within forty-eight hours of the next business day after the move if
20 this is an emergency move, except where such notification would
21 endanger the child or the foster family. This notice shall not be
22 required in any case where the child is in imminent danger in the
23 child's current placement. The location of the child need not be

1 disclosed, but the purpose of the move should be. This requirement
2 is not waived by placement of the child in a home or other
3 residence maintained by a private provider. No notice shall be
4 provided pursuant to this provision to any parent or parent's
5 attorney whose parental rights have been terminated pursuant to
6 this article.

7 (i) Nothing in this article precludes any party from
8 petitioning the court for review of the child's case at any time.
9 The court shall grant such petition upon a showing that there is a
10 change in circumstance or needs of the child that warrants court
11 review.

12 (j) Any foster parent, preadoptive parent or relative
13 providing care for the child shall be given notice of and the right
14 to be heard at the permanency hearing provided in this section.

15 **§49-13-109. Custody by law enforcement or physician in emergency**
16 **situations.**

17 (a) A child believed to be a neglected child or an abused
18 child may be taken into custody without the court order otherwise
19 required by section one hundred two of this article by a
20 law-enforcement officer if:

21 (1) The child is abandoned as defined in section two hundred
22 one, article one of this chapter; or

23 (2) That officer determines that the child is in a condition

1 requiring emergency medical treatment by a physician and the
2 child's parents, parent, guardian or custodian refuses to permit
3 such treatment, or is unavailable for consent. A child who suffers
4 from a condition requiring emergency medical treatment, whose
5 parents, parent, guardian or custodian refuses to permit the
6 providing of such emergency medical treatment, may be retained in
7 a hospital by a physician against the will of such parents, parent,
8 guardian or custodian, as provided in subsection (c) of this
9 section.

10 (b) A child taken into protective custody as abandoned under
11 this section may be housed by the department or in any authorized
12 child shelter facility. The authority to hold such child in
13 protective custody as abandoned, absent a petition and proper order
14 granting temporary custody pursuant to section one hundred two of
15 this article, shall terminate by operation of law upon the
16 happening of either of the following events, whichever shall first
17 occur:

18 (1) The expiration of ninety-six hours from the time the child
19 is initially taken into protective custody; or

20 (2) The expiration of the circumstances which initially
21 warranted the determination of abandonment.

22 No child may be considered abandoned and custody withheld from
23 such child's parents, parent, guardian or custodian presenting

1 themselves, himself or herself in a fit and proper condition and
2 requesting physical custody of such child. No child may be removed
3 from a place of residence as abandoned under this section until
4 after:

5 (1) All reasonable efforts to make inquiries and arrangements
6 with neighbors, relatives and friends have been exhausted; or if no
7 such arrangements can be made; and

8 (2) The state department may place in the residence a home
9 services worker with the child for a period of not less than twelve
10 hours to await the return of such child's parents, parent, guardian
11 or custodian.

12 Prior to taking a child into protective custody as abandoned
13 at a place at or near the residence of such child, the
14 law-enforcement officer shall post a typed or legibly handwritten
15 notice at the place the child is found, informing the parents,
16 parent, guardian or custodian that the child was taken by a
17 law-enforcement officer, the name, address and office telephone
18 number of the officer, the place and telephone number where
19 information can continuously be obtained as to the child's
20 whereabouts, and if known, the worker for the state department
21 having responsibility for the child.

22 (c) A child taken into protective custody pursuant to this
23 section for emergency medical treatment may be held in a hospital

1 under the care of a physician against the will of such child's
2 parents, parent, guardian or custodian for a period not to exceed
3 ninety-six hours. The parents, parent, guardian or custodian may
4 not be denied the right to see or visit with such child in a
5 hospital. The authority to retain a child in protective custody in
6 a hospital as requiring emergency medical treatment shall terminate
7 by operation of law upon the happening of either of the following
8 events, whichever shall first occur:

9 (1) When the condition, in the opinion of the physician, no
10 longer required emergency hospitalization, or;

11 (2) Upon the expiration of ninety-six hours from the
12 initiation of custody, unless within such time, a petition is
13 presented and a proper order obtained from the circuit court.

14 (d) Prior to assuming custody of a child from a
15 law-enforcement officer, pursuant to this section, a physician or
16 worker from the department shall require a typed or legibly
17 handwritten statement from such officer identifying such officer's
18 name, address and office telephone number and specifying all the
19 facts upon which the decision to take the child into protective
20 custody was based, and the date, time and place of the taking.

21 (e) Any worker for the department assuming custody of a child
22 pursuant to this section shall immediately notify the parents,
23 parent, guardian or custodian of the child of the taking of such

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

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

16 (g) *Petition for appointment of special guardian.* -- Upon the
17 verified petition of any person showing:

18 (1) That any person under the age of eighteen years is
19 threatened with or there is a substantial possibility that such
20 person will suffer death, serious or permanent physical or
21 emotional disability, disfigurement or suffering; and

22 (2) That disability, disfigurement or suffering is the result
23 of the failure or refusal of any parent, guardian or custodian to

1 procure, consent to or authorize necessary medical treatment, the
2 circuit court of the county in which such person is located may
3 direct the appointment of a special guardian for the purposes of
4 procuring, consenting to and giving authorization for the
5 administration of necessary medical treatment. The circuit court
6 shall not consider any petition filed in accordance with this
7 section unless it shall be accompanied by a supporting affidavit of
8 a licensed physician.

9 (h) Notice of petition. -- So far as practicable, the parents,
10 guardian or custodian of any person for whose benefit medical
11 treatment is sought shall be given notice of the petition for the
12 appointment of a special guardian under this section. Such notice
13 shall not be necessary if it would cause such delay as would result
14 in the death or irreparable harm to the person for whose benefit
15 medical treatment is sought. Such notice may be given in such form
16 and manner as may be necessary under the circumstances.

17 (i) Discharge of special guardian. -- Upon the termination of
18 necessary medical treatment to any person under this section, the
19 circuit court order the discharge of the special guardian from any
20 further authority, responsibility or duty.

21 (j) Immunity from civil liability. -- No person appointed
22 special guardian in accordance with this article shall be civilly
23 liable for any act done by virtue of the authority vested in him or

1 her by order of the circuit court.

2 **§49-13-110. Authorizing a family court judge to order custody of**
3 **a child in emergency situations.**

4 (a) Notwithstanding the jurisdictional limitations contained
5 in section two, article two-a, chapter fifty-one of this code,
6 family court judges are authorized to order the department to take
7 emergency custody of a child who is in the physical custody of a
8 party to an action or proceeding before the family court, if the
9 family court judge finds that there is clear and convincing
10 evidence that:

11 (1) There exists an imminent danger to the physical well-being
12 of the child as defined in section two hundred one, article one of
13 this chapter;

14 (2) The child is not the subject of a pending action before
15 the circuit court alleging abuse and neglect of the child; and

16 (3) There are no reasonable available alternatives to the
17 emergency custody order.

18 (b) An order entered pursuant to subsection (a) of this
19 section must include specific written findings.

20 (c) A copy of the order issued pursuant to subsection (a) of
21 this section shall be transmitted forthwith to the department, the
22 circuit court and the prosecuting attorney.

23 (d) Upon receipt of an order issued pursuant to subsection (a)

1 of this section, the department shall immediately respond and
2 assist the family court judge in emergency placement of the child.

3 (e) (1) Upon receipt of an order issued pursuant to subsection
4 (a) of this section, the circuit court shall cause to be entered
5 and served, an administrative order in the name of and regarding
6 the affected child, directing the department to submit, within
7 ninety-six hours from the time the child was taken into custody, an
8 investigative report to both the circuit and family court.

9 (2) The investigative report shall include a statement of
10 whether the department intends to file a petition under section one
11 hundred three of this article.

12 (f) (1) An order issued pursuant to subsection (a) of this
13 section terminates by operation of law upon expiration of
14 ninety-six hours from the time the child is initially taken into
15 protective custody unless a petition is filed with the circuit
16 court under section three of this article within ninety-six hours
17 from the time the child is initially taken into protective custody.

18 (2) The filing of a petition within ninety-six hours from the
19 time the child is initially taken into protective custody extends
20 the emergency custody order issued pursuant to subsection (a) of
21 this section until a preliminary hearing is held before the circuit
22 court, unless the circuit court orders otherwise.

23 (g) (1) Any worker for the department assuming custody of a

1 child pursuant to this section shall immediately notify the
2 parents, parent, grandparents, grandparent, guardian or custodian
3 of the child of the taking of the custody and the reasons therefor
4 if the whereabouts of the parents, parent, grandparents,
5 grandparent, guardian or custodian are known or can be discovered
6 with due diligence and, if not, a notice and explanation shall be
7 given to the child's closest relative if his or her whereabouts are
8 known or can be discovered with due diligence within a reasonable
9 time. An inquiry shall be made of relatives and neighbors and, if
10 an appropriate relative or neighbor is willing to assume custody of
11 the child, the child shall temporarily be placed in that person's
12 custody.

13 (2) In the event no other reasonable alternative is available
14 for temporary placement of a child pursuant to subdivision (1) of
15 this subsection, the child may be housed by the department in an
16 authorized child shelter facility.

17 **§49-13-111. Duties of prosecuting attorney.**

18 It shall be the duty of every prosecuting attorney to fully
19 and promptly cooperate with persons seeking to apply for relief
20 under this article in all cases of suspected child abuse and
21 neglect, to promptly prepare applications and petitions for relief
22 requested by such persons, to investigate reported cases of
23 suspected child abuse and neglect for possible criminal activity

1 and to report at least annually to the grand jury regarding the
2 discharge of his or her duties with respect thereto.

3 **§49-13-112. Dispute resolution.**

4 (a) Whenever, pursuant to this article, a prosecuting attorney
5 acts as counsel for the Department of Health and Human Resources
6 and a dispute arises between the prosecuting attorney and the
7 department's representative because an action proposed by the other
8 is believed to place the child at imminent risk of abuse or serious
9 neglect, either the prosecuting attorney or the department's
10 representative may contact the secretary of the department and the
11 executive director of the West Virginia prosecuting attorneys
12 institute for prompt mediation and resolution. The secretary may
13 designate either his or her general counsel or the director of
14 social services to act as his or her designee and the executive
15 director may designate an objective prosecuting attorney as his or
16 her designee.

17 (b) Nothing in this code shall be construed to limit the
18 authority of a prosecuting attorney to file an abuse or neglect
19 petition, including the duties and responsibilities owed to its
20 client the Department of Health and Human Resources, in his or her
21 fulfillment of the provisions of chapter forty-nine, article
22 thirteen of this code.

23 **§49-13-113. Conviction for offenses against children.**

1 In any case where a person is convicted of an offense against
2 a child described in section twelve, article eight, chapter
3 sixty-one of this code or articles eight-b or eight-d of that
4 chapter and the person has custodial, visitation or other parental
5 rights to the child who is the victim of the offense or to any
6 child who resides in the same household as the victim, the court
7 shall, at the time of sentencing, find that the person is an
8 abusing parent within the meaning of this chapter as to the child
9 victim, and may find that the person is an abusing parent as to any
10 child who resides in the same household as the victim, and the
11 court shall take such further steps as are required by this
12 article.

13 **§49-13-114. Improvement period in cases of child neglect or abuse.**

14 In any proceeding brought pursuant to this article, the court
15 may grant any respondent an improvement period in accord with this
16 article. During such period, the court may require temporary
17 custody with a responsible person which has been found to be a fit
18 and proper person for the temporary custody of the child or
19 children or the state department or other agency during the
20 improvement period. An order granting such improvement period shall
21 require the department to prepare and submit to the court a family
22 case plan in accordance with section one hundred two, article
23 twelve of this chapter. The types of improvement periods are as

1 follows:

2 (1) Preadjudicatory improvement period. -- A court may grant
3 a respondent an improvement period of a period not to exceed three
4 months prior to making a finding that a child is abused or
5 neglected pursuant to section one hundred two of this article only
6 when:

7 (A) The respondent files a written motion requesting the
8 improvement period;

9 (B) The respondent demonstrates, by clear and convincing
10 evidence, that the respondent is likely to fully participate in the
11 improvement period and the court further makes a finding, on the
12 record, of the terms of the improvement period;

13 (C) In the order granting the improvement period, the court:

14 (i) orders that a hearing be held to review the matter within
15 sixty days of the granting of the improvement period; or

16 (ii) orders that a hearing be held to review the matter within
17 ninety days of the granting of the improvement period and that the
18 department submit a report as to the respondents progress in the
19 improvement period within sixty days of the order granting the
20 improvement period; and

21 (D) The order granting the improvement period requires the
22 department to prepare and submit to the court an individualized
23 family case plan in accordance with section one hundred two,

1 article twelve of this chapter;

2 (2) Post-adjudicatory improvement period. -- After finding
3 that a child is an abused or neglected child pursuant to section
4 one hundred two of this article, a court may grant a respondent an
5 improvement period of a period not to exceed six months when:

6 (A) The respondent files a written motion requesting the
7 improvement period;

8 (B) The respondent demonstrates, by clear and convincing
9 evidence, that the respondent is likely to fully participate in the
10 improvement period and the court further makes a finding, on the
11 record, of the terms of the improvement period;

12 (C) In the order granting the improvement period, the court:

13 (i) orders that a hearing be held to review the matter within
14 sixty days of the granting of the improvement period; or

15 (ii) orders that a hearing be held to review the matter within
16 ninety days of the granting of the improvement period and that the
17 department submit a report as to the respondent's progress in the
18 improvement period within sixty days of the order granting the
19 improvement period;

20 (D) Since the initiation of the proceeding, the respondent has
21 not previously been granted any improvement period or the
22 respondent demonstrates that since the initial improvement period,
23 the respondent has experienced a substantial change in

1 circumstances. Further, the respondent shall demonstrate that due
2 to that change in circumstances the respondent is likely to fully
3 participate in a further improvement period; and

4 (E) The order granting the improvement period requires the
5 department to prepare and submit to the court an individualized
6 family case plan in accordance with section one hundred two,
7 article twelve of this chapter.

8 (3) *Post-dispositional improvement period.* The court may grant
9 an improvement period not to exceed six months as a disposition
10 pursuant to section one hundred four of this article when:

11 (A) The respondent moves in writing for the improvement
12 period;

13 (B) The respondent demonstrates, by clear and convincing
14 evidence, that the respondent is likely to fully participate in the
15 improvement period and the court further makes a finding, on the
16 record, of the terms of the improvement period;

17 (C) In the order granting the improvement period, the court:

18 (i) Orders that a hearing be held to review the matter within
19 sixty days of the granting of the improvement period; or

20 (ii) Orders that a hearing be held to review the matter within
21 ninety days of the granting of the improvement period and that the
22 department submit a report as to the respondent's progress in the
23 improvement period within sixty days of the order granting the

1 improvement period;

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

9 (E) The order granting the improvement period shall require
10 the department to prepare and submit to the court an individualized
11 family case plan in accordance with section one hundred two,
12 article twelve of this chapter.

13 (4) Responsibilities of the respondent receiving improvement
14 period. --

15 (A) When any improvement period is granted to a respondent
16 pursuant to this section, the respondent shall be responsible for
17 the initiation and completion of all terms of the improvement
18 period. The court may order the state department to pay expenses
19 associated with the services provided during the improvement period
20 when the respondent has demonstrated that he or she is unable to
21 bear such expenses.

22 (B) When any improvement period is granted to a respondent
23 pursuant to this section, the respondent shall execute a release of

1 all medical information regarding that respondent, including, but
2 not limited to, information provided by mental health and substance
3 abuse professionals and facilities. Such release shall be accepted
4 by any such professional or facility regardless of whether the
5 release conforms to any standard required by that facility.

6 (5) Responsibilities of the department during improvement
7 period. -- When any respondent is granted an improvement period
8 pursuant to this article, the department shall monitor the progress
9 of such person in the improvement period. This section may not be
10 construed to prohibit a court from ordering a respondent to
11 participate in services designed to reunify a family or to relieve
12 the department of any duty to make reasonable efforts to reunify a
13 family required by state or federal law.

14 (6) Extension of improvement period. -- A court may extend any
15 improvement period granted pursuant to subdivision (2) or (3) of
16 this section for a period not to exceed three months when the court
17 finds that the respondent has substantially complied with the terms
18 of the improvement period; that the continuation of the improvement
19 period will not substantially impair the ability of the department
20 to permanently place the child; and that such extension is
21 otherwise consistent with the best interest of the child.

22 (7) Termination of improvement period. -- Upon the motion by
23 any party, the court shall terminate any improvement period granted

1 pursuant to this section when the court finds that respondent has
2 failed to fully participate in the terms of the improvement period
3 or has satisfied the terms of the improvement period to correct any
4 behavior alleged in the petition or amended petition to make his or
5 her child unsafe.

6 (8) Hearings on improvement period. --

7 (A) Any hearing scheduled pursuant to this section may be
8 continued only for good cause upon a written motion properly served
9 on all parties. When a court grants such continuance, the court
10 shall enter an order granting the continuance which shall specify
11 a future date when the hearing will be held.

12 (B) Any hearing to be held at the end of an improvement period
13 shall be held as nearly as practicable on successive days and shall
14 be held as close in time as possible after the end of said
15 improvement period and shall be held no later than sixty days of
16 the termination of such improvement period.

17 (9) Time limit for improvement periods. -- Notwithstanding any
18 other provision of this section, no combination of any improvement
19 periods or extensions thereto may cause a child to be in foster
20 care more than fifteen months of the most recent twenty-two months,
21 unless the court finds compelling circumstances by clear and
22 convincing evidence that it is in the child's best interests to
23 extend the time limits contained in this paragraph.

1 **ARTICLE 14. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED.**

2 **§49-14-101. Purpose.**

3 It is the purpose of this article through the complete
4 reporting of child abuse and neglect:

5 (1) To protect the best interests of the child;

6 (2) To offer protective services in order to prevent any
7 further harm to the child or any other children living in the home;

8 (3) To stabilize the home environment, to preserve family life
9 whenever possible;

10 (4) To promote adult responsibility for protecting children;
11 and

12 (5) To encourage cooperation among the states to prevent
13 future incidents of child abuse and neglect and in dealing with the
14 problems of child abuse and neglect.

15 **§49-14-102. Establishment of child protective services; general**
16 **duties and powers; immunity from civil liability;**
17 **cooperation of other state agencies.**

18 (a) The department shall establish or designate in every
19 county a local child protective services office to perform the
20 duties and functions set forth in this article.

21 (b) The local child protective services office shall
22 investigate all reports of child abuse or neglect. Under no

1 circumstances shall investigating personnel be relatives of the
2 accused, the child or the families involved. In accordance with
3 the local plan for child protective services, it shall provide
4 protective services to prevent further abuse or neglect of children
5 and provide for or arrange for and coordinate and monitor the
6 provision of those services necessary to ensure the safety of
7 children. The local child protective services office shall be
8 organized to maximize the continuity of responsibility, care and
9 service of individual workers for individual children and families.
10 Under no circumstances may the secretary or his or her designee
11 promulgate rules or establish any policy which restricts the scope
12 or types of alleged abuse or neglect of minor children which are to
13 be investigated or the provision of appropriate and available
14 services.

15 (c) Each local child protective services office shall:

16 (1) Receive or arrange for the receipt of all reports of
17 children known or suspected to be abused or neglected on a
18 twenty-four hour, seven-day-a-week basis and cross-file all such
19 reports under the names of the children, the family and any person
20 substantiated as being an abuser or neglecter by investigation of
21 the Department of Health and Human Resources, with use of such
22 cross-filing of such person's name limited to the internal use of
23 the department;

1 (2) Provide or arrange for emergency children's services to be
2 available at all times;

3 (3) Upon notification of suspected child abuse or neglect,
4 commence or cause to be commenced a thorough investigation of the
5 report and the child's environment. As a part of this response,
6 within fourteen days there shall be a face-to-face interview with
7 the child or children and the development of a protection plan, if
8 necessary for the safety or health of the child, which may involve
9 law-enforcement officers or the court;

10 (4) Respond immediately to all allegations of imminent danger
11 to the physical well-being of the child or of serious physical
12 abuse. As a part of this response, within seventy-two hours there
13 shall be a face-to-face interview with the child or children and
14 the development of a protection plan, which may involve
15 law-enforcement officers or the court; and

16 (5) In addition to any other requirements imposed by this
17 section, when any matter regarding child custody is pending, the
18 circuit court or family law master may refer allegations of child
19 abuse and neglect to the local child protective services office for
20 investigation of the allegations as defined by this chapter and
21 require the local child protective services office to submit a
22 written report of the investigation to the referring circuit court
23 or family law master within the time frames set forth by the

1 circuit court or family law master.

2 (d) In those cases in which the local child protective
3 services office determines that the best interests of the child
4 require court action, the local child protective services office
5 shall initiate the appropriate legal proceeding.

6 (e) The local child protective services office shall be
7 responsible for providing, directing or coordinating the
8 appropriate and timely delivery of services to any child suspected
9 or known to be abused or neglected, including services to the
10 child's family and those responsible for the child's care.

11 (f) To carry out the purposes of this article, all
12 departments, boards, bureaus and other agencies of the state or any
13 of its political subdivisions and all agencies providing services
14 under the local child protective services plan shall, upon request,
15 provide to the local child protective services office such
16 assistance and information as will enable it to fulfill its
17 responsibilities.

18 (g) (1) In order to obtain information regarding the location
19 of a child who is the subject of an allegation of abuse or neglect,
20 the Secretary of the Department of Health and Human Resources may
21 serve, by certified mail or personal service, an administrative
22 subpoena on any corporation, partnership, business or organization
23 for the production of information leading to determining the

1 location of the child.

2 (2) In case of disobedience to the subpoena, in compelling the
3 production of documents, the secretary may invoke the aid of:

4 (A) The circuit court with jurisdiction over the served party
5 if the person served is a resident; or

6 (B) the circuit court of the county in which the local child
7 protective services office conducting the investigation is located
8 if the person served is a nonresident.

9 (3) A circuit court shall not enforce an administrative
10 subpoena unless it finds that:

11 (A) The investigation is one the Division of Child Protective
12 Services is authorized to make and is being conducted pursuant to
13 a legitimate purpose;

14 (B) The inquiry is relevant to that purpose;

15 (C) The inquiry is not too broad or indefinite;

16 (D) The information sought is not already in the possession of
17 the Division of Child Protective Services; and

18 (E) Any administrative steps required by law have been
19 followed.

20 (4) If circumstances arise where the secretary, or his or her
21 designee, determines it necessary to compel an individual to
22 provide information regarding the location of a child who is the
23 subject of an allegation of abuse or neglect, the secretary, or his

1 or her designee, may seek a subpoena from the circuit court with
2 jurisdiction over the individual from whom the information is
3 sought.

4 (h) No child protective services caseworker may be held
5 personally liable for any professional decision or action taken
6 pursuant to that decision in the performance of his or her official
7 duties as set forth in this section or agency rules promulgated
8 thereupon: *Provided*, That nothing in this subsection protects any
9 child protective services worker from any liability arising from
10 the operation of a motor vehicle or for any loss caused by gross
11 negligence, willful and wanton misconduct or intentional
12 misconduct.

13 **§49-14-103. Persons mandated to report suspected abuse and**
14 **neglect.**

15 (a) Any medical, dental or mental health professional,
16 Christian Science practitioner, religious healer, school teacher or
17 other school personnel, social service worker, child care or foster
18 care worker, emergency medical services personnel, peace officer or
19 law-enforcement official, humane officer, member of the clergy,
20 circuit court judge, family court judge, employee of the Division
21 of Juvenile Services, magistrate, youth camp administrator or
22 counselor, employee, coach or volunteer of an entity that provides
23 organized activities for children, or commercial film or

1 photographic print processor who has reasonable cause to suspect
2 that a child is neglected or abused or observes the child being
3 subjected to conditions that are likely to result in abuse or
4 neglect shall immediately, and not more than forty-eight hours
5 after suspecting this abuse or neglect, report the circumstances or
6 cause a report to be made to the Department of Health and Human
7 Resources. In any case where the reporter believes that the child
8 suffered serious physical abuse or sexual abuse or sexual assault,
9 the reporter shall also immediately report, or cause a report to be
10 made, to the State Police and any law-enforcement agency having
11 jurisdiction to investigate the complaint. Any person required to
12 report under this article who is a member of the staff or volunteer
13 of a public or private institution, school, entity that provides
14 organized activities for children, facility or agency shall also
15 immediately notify the person in charge of the institution, school,
16 entity that provides organized activities for children, facility or
17 agency, or a designated agent thereof, who may supplement the
18 report or cause an additional report to be made.

19 (b) Any person over the age of eighteen who receives a
20 disclosure from a credible witness or observes any sexual abuse or
21 sexual assault of a child, shall immediately, and not more than
22 forty-eight hours after receiving such a disclosure or observing
23 the sexual abuse or sexual assault, report the circumstances or

1 cause a report to be made to the Department of Health and Human
2 Resources or the State Police or other law-enforcement agency
3 having jurisdiction to investigate the report. In the event that
4 the individual receiving the disclosure or observing the sexual
5 abuse or sexual assault has a good faith belief that the reporting
6 of the event to the police would expose either the reporter, the
7 subject child, the reporter's children or other children in the
8 subject child's household to an increased threat of serious bodily
9 injury, the individual may delay making the report while he or she
10 undertakes measures to remove themselves or the affected children
11 from the perceived threat of additional harm and the individual
12 makes the report as soon as practicable after the threat of harm
13 has been reduced. The law-enforcement agency that receives a
14 report under this subsection shall report the allegations to the
15 Department of Health and Human Resources and coordinate with any
16 other law-enforcement agency, as necessary to investigate the
17 report.

18 (c) Nothing in this article is intended to prevent individuals
19 from reporting suspected abuse or neglect on their own behalf. In
20 addition to those persons and officials specifically required to
21 report situations involving suspected abuse or neglect of children,
22 any other person may make a report if such person has reasonable
23 cause to suspect that a child has been abused or neglected in a

1 home or institution or observes the child being subjected to
2 conditions or circumstances that would reasonably result in abuse
3 or neglect.

4 **§49-14-104. Notification of disposition of reports.**

5 The Department of Health and Human Resources shall continue to
6 develop, update and implement a procedure to notify any person
7 mandated to report suspected child abuse and neglect under section
8 one hundred three of this article, of whether an investigation into
9 the reported suspected abuse or neglect has been initiated and when
10 the investigation is completed.

11 **§49-14-105. Educational programs.**

12 Subject to appropriation in the budget, the department shall
13 conduct educational and training programs for persons required to
14 report suspected abuse or neglect, and the general public, as well
15 as implement evidence-based programs that reduce incidents of child
16 maltreatment including sexual abuse. Training for persons require
17 to report and the general public shall include:

18 (1) Indicators of child abuse and neglect;

19 (2) Tactics used by sexual abusers;

20 (3) How and when to make a report; and

21 (4) Protective factors that prevent abuse and neglect in order
22 to promote adult responsibility for protecting children, encourage
23 maximum reporting of child abuse and neglect, and to improve

1 communication, cooperation and coordination among all agencies
2 involved in the identification, prevention and treatment of the
3 abuse and neglect of children.

4 **§49-14-106. Mandatory reporting of suspected animal cruelty by**
5 **child protective service workers.**

6 In the event a child protective service worker, in response to
7 a report mandated by section one hundred two of this article, forms
8 a reasonable suspicion that an animal is the victim of cruel or
9 inhumane treatment, he or she shall report the suspicion and the
10 basis therefor to the county humane officer provided under section
11 one, article ten, chapter seven of this code within twenty-four
12 hours of the response to the report.

13 **§49-14-107. Mandatory reporting to medical examiner or coroner;**
14 **postmortem investigation.**

15 Any person or official who is required under section one
16 hundred three of this article to report cases of suspected child
17 abuse or neglect and who has reasonable cause to suspect that a
18 child has died as a result of child abuse or neglect, shall report
19 that fact to the appropriate medical examiner or coroner. Upon the
20 receipt of such a report, the medical examiner or coroner shall
21 cause an investigation to be made and report his or her findings to
22 the police, the appropriate prosecuting attorney, the local child
23 protective service agency and, if the institution making a report

1 is a hospital, to the hospital.

2 **§49-14-108. Photographs and X rays.**

3 Any person required to report cases of children suspected of
4 being abused and neglected may take or cause to be taken, at public
5 expense, photographs of the areas of trauma visible on a child and,
6 if medically indicated, cause to be performed radiological
7 examinations of the child. Any photographs or X rays taken shall
8 be sent to the appropriate child protective service as soon as
9 possible.

10 **§49-14-109. Reporting procedures.**

11 (a) Reports of child abuse and neglect pursuant to this
12 article shall be made immediately by telephone to the local
13 department child protective service agency and shall be followed by
14 a written report within forty-eight hours if so requested by the
15 receiving agency. The state department shall establish and
16 maintain a twenty-four hour, seven-day-a-week telephone number to
17 receive such calls reporting suspected or known child abuse or
18 neglect.

19 (b) A copy of any report of serious physical abuse, sexual
20 abuse or assault shall be forwarded by the department to the
21 appropriate law-enforcement agency, the prosecuting attorney or the
22 coroner or medical examiner's office. All reports under this
23 article shall be confidential. Reports of known or suspected

1 institutional child abuse or neglect shall be made and received as
2 all other reports made pursuant to this article.

3 **§49-14-110. Immunity from liability.**

4 Any person, official or institution participating in good
5 faith in any act permitted or required by this article shall be
6 immune from any civil or criminal liability that otherwise might
7 result by reason of such actions.

8 **§49-14-111. Abrogation of privileged communications.**

9 The privileged quality of communications between husband and
10 wife and between any professional person and his or her patient or
11 his or her client, except that between attorney and client, is
12 hereby abrogated in situations involving suspected or known child
13 abuse or neglect.

14 **§49-14-112. Failure to report; penalty.**

15 Any person, official or institution required by this article
16 to report a case involving a child known or suspected to be abused
17 or neglected, or required by section one hundred nine of this
18 article to forward a copy of a report of serious injury, who
19 knowingly fails to do so or knowingly prevents another person
20 acting reasonably from doing so, is guilty of a misdemeanor and,
21 upon conviction, shall be confined in jail not more than thirty
22 days or fined not more than \$1,000, or both fined and confined.

23 **§49-14-113. Statistical reports.**

1 The Department of Health and Human Resources shall maintain a
2 statewide child abuse and neglect statistical index of all
3 substantiated allegations of child abuse or neglect cases to
4 include information contained in the reports required under this
5 article and any other information considered appropriate by the
6 Secretary of the Department of Health and Human Resources. Nothing
7 in the statistical data index maintained by the Department of
8 Health and Human Resources may contain information of a specific
9 nature that would identify individual cases or persons.
10 Notwithstanding the provisions of section one hundred one, article
11 fifteen of this chapter, the Department of Health and Human
12 Resources shall provide copies of the statistical data maintained
13 pursuant to this subsection to the State Police child abuse and
14 neglect investigations unit to carry out its responsibilities to
15 protect children from abuse and neglect.

16 **ARTICLE 15. EMERGENCY POSSESSION OF CERTAIN ABANDONED CHILDREN.**

17 **§49-15-101. Accepting possession of certain abandoned children.**

18 (a) A hospital or health care facility operating in this
19 state, shall, without a court order, take possession of a child if
20 the child is voluntarily delivered to the hospital or health care
21 facility by the child's parent within thirty days of the child's
22 birth and the parent did not express an intent to return for the
23 child.

1 (b) A hospital or health care facility that takes possession
2 of a child under this article shall perform any act necessary to
3 protect the physical health or safety of the child. In accepting
4 possession of the child, the hospital or health care facility may
5 not require the person to identify themselves, but shall otherwise
6 respect the person's desire to remain anonymous.

7 **§49-15-102. Notification of possession of abandoned child.**

8 (a) Not later than the close of the first business day after
9 the date on which a hospital or health care facility takes
10 possession of a child under section one hundred one of this
11 article, the hospital or health care facility shall notify the
12 Child Protective Services Division of the Department of Health and
13 Human Resources that it has taken possession of the child and shall
14 provide the division any information provided by the parent
15 delivering the child. The hospital or health care facility shall
16 refer any inquiries about the child to the Child Protective
17 Services Division.

18 (b) The Department of Health and Human Resources shall assume
19 the care, control and custody of the child as of the time of
20 delivery of the child to the hospital or health care facility, and
21 may contract with private child care agency for the care and
22 placement of the child after the child leaves the hospital or
23 health care facility.

1 **§49-15-103. Filing petition after accepting possession of**

2 **abandoned child.**

3 A child of whom the Department of Health and Human Resources
4 assumes care, control and custody under this article shall be
5 deemed an abandoned child and be treated in all respects as a child
6 taken into custody under section one hundred nine, article thirteen
7 of this chapter. Upon taking custody of a child under this
8 article, the department, with the cooperation of the county
9 prosecuting attorney, shall cause a petition to be presented
10 pursuant to section one hundred two, article thirteen of this
11 chapter. Thereafter, the department shall proceed in compliance
12 with article thirteen of this chapter.

13 **§49-15-104. Affirmative defense for certain prosecutions.**

14 It is an affirmative defense to prosecution under subsection
15 (a), section four, article eight-d, chapter sixty-one of this code
16 if a parent charged under that section delivered the child, for
17 whom the parent is charged, within thirty days of the child's
18 birth.

19 **§49-15-105. Placement of child for adoption.**

20 The child shall be eligible for adoption as an abandoned child
21 under chapter forty-eight of the code.

22 **ARTICLE 16. CAREGIVERS CONSENT ACT.**

1 **§49-16-101. Caregiver consent for minor's health care.**

2 (a) Except for minor children placed under the custody of the
3 Department of Health and Human Resources pursuant to proceedings
4 established by this chapter, a caregiver who possesses and presents
5 a notarized affidavit pursuant to section one hundred five of this
6 article may consent on behalf of a minor to health care and
7 treatment.

8 (b) Examination and treatment shall be prescribed by or under
9 the supervision of a physician, advanced practice nurse, dentist or
10 mental health professional licensed to practice in the state.

11 **§49-16-102. Duty of health care facility or practitioner.**

12 The decision of a caregiver who possesses and presents a
13 notarized affidavit of caregiver consent for a minor's health care
14 pursuant to section one hundred five of this article shall be
15 honored by a health care facility or practitioner unless the health
16 care facility or practitioner has actual knowledge that a parent,
17 legal custodian or guardian of a minor has made a contravening
18 decision to consent to or to refuse medical treatment for the
19 minor.

20 **§49-16-103. Affidavit of caregiver consent.**

21 An affidavit of caregiver consent for a minor's health care
22 shall include the following:

23 (1) The caregiver's name and current home address;

- 1 (2) The caregiver's birth date;
2 (3) The relationship of the caregiver to the minor;
3 (4) The minor's name;
4 (5) The minor's birth date;
5 (6) The length of time the minor has resided with the
6 caregiver;
7 (7) The caregiver's signature under oath affirming the truth
8 of the matter asserted in the affidavit;
9 (8) The signature of the minor's parent, guardian or legal
10 custodian consenting to the caregiver's authority over the minor's
11 health care. The signature of the minor's parent, guardian or
12 legal custodian is not necessary if the affidavit includes the
13 following:
14 (A) A statement that the caregiver has attempted, but has been
15 unable to obtain, the signature of the minor's parent, guardian or
16 legal custodian;
17 (B) A statement that the minor's parent, guardian or legal
18 custodian has not refused to give consent for health care and
19 treatment of the minor child; and
20 (C) A description, in detail, of the attempts the caregiver
21 made to obtain the signature of the minor's parent, guardian or
22 legal custodian; and
23 (9) A statement, as follows:

1 "General Notices:

2 This declaration does not affect the rights of the minor's
3 parent, guardian or legal custodian regarding the care, custody and
4 control of the minor, other than with respect to health care, and
5 does not give the caregiver legal custody of the minor.

6 This affidavit is valid for one year unless the minor no
7 longer resides in the caregiver's home. Furthermore, the minor's
8 parent, guardian or legal custodian may at any time rescind this
9 affidavit of caregiver consent for a minor's health care by
10 providing written notification of the rescission to the appropriate
11 health care professional.

12 A person who relies in good faith on this affidavit of
13 caregiver consent for a minor's health care has no obligation to
14 conduct any further inquiry or investigation and shall not be
15 subject to civil or criminal liability or to professional
16 disciplinary action because of that reliance."

17 **§49-16-104. Revocation and termination of consent.**

18 (a) The affidavit of caregiver consent for a minor's health
19 care is superseded by written notification from the minor's parent,
20 guardian or legal custodian to the health care professionals
21 providing services to the minor that the affidavit has been
22 rescinded.

23 (b) The affidavit of caregiver consent for a minor's health

1 care is valid for one year unless the minor no longer resides in
2 the caregiver's home or a parent, guardian or legal custodian
3 revokes his or her approval by written notification to the health
4 care professionals providing services to the minor that the
5 affidavit has been rescinded. If a parent, guardian or legal
6 custodian revokes approval, the caregiver shall notify any health
7 care provider or health service plans with which the minor has been
8 involved through the caregiver.

9 **§49-16-105. Good faith reliance on affidavit.**

10 (a) Any person who relies in good faith on the affidavit of
11 caregiver consent for a minor's health care:

12 (1) Has no obligation to conduct any further inquiry or
13 investigation; and

14 (2) Is not subject to civil or criminal liability or to
15 professional disciplinary action because of the reliance.

16 (b) Subsection (a) of this section applies even if medical
17 treatment is provided to a minor in contravention of a decision of
18 a parent, legal custodian or guardian of the minor who signed the
19 affidavit if the person providing care has no actual knowledge of
20 the decision of the parent, legal custodian or guardian.

21 **§49-16-106. Exceptions to applicability.**

22 The consent authorized by this section shall not be applicable
23 for purposes of the Individuals with Disabilities Education Act, 20

1 U.S.C. §1400 et seq., or Section 504 of the Rehabilitation Act of
2 1973, 29 U.S.C. §791.

3 **§49-16-107. Penalty for false statement.**

4 A person who knowingly makes a false statement in an affidavit
5 under this article is guilty of a misdemeanor and, upon conviction,
6 shall be fined not more than \$1,000.

7 **§49-16-108. Rule-making authority.**

8 The Secretary of the Department of Health and Human Resources
9 is authorized to propose rules necessary to implement this article
10 for legislative approval in accordance with article three, chapter
11 twenty-nine-a of this code.

12 **ARTICLE 17. RECORD KEEPING AND DATABASE.**

13 **§49-17-101. Confidentiality of records.**

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

21 (b) Notwithstanding the provisions of subsection (a) of this
22 section or any other provision of this code to the contrary,
23 records concerning a child or juvenile, except adoption records and

1 records disclosing the identity of a person making a complaint of
2 child abuse or neglect shall be made available:

3 (1) Where otherwise authorized by this chapter;

4 (2) To:

5 (A) The child;

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

7 or

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

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

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

16 (c) In addition to those persons or entities to whom
17 information may be disclosed under subsection (b) of this section,
18 information related to child abuse or neglect proceedings, except
19 information relating to the identity of the person reporting or
20 making a complaint of child abuse or neglect, shall be made
21 available, upon request, to:

22 (1) Federal, state or local government entities, or any agent
23 of such entities, including law-enforcement agencies and

1 prosecuting attorneys, having a need for such information in order
2 to carry out its responsibilities under law to protect children
3 from abuse and neglect;

4 (2) The child fatality review team;

5 (3) Child abuse citizen review panels;

6 (4) Multidisciplinary investigative and treatment teams; or

7 (5) A grand jury, circuit court or family court, upon a
8 finding that information in the records is necessary for the
9 determination of an issue before the grand jury, circuit court or
10 family court.

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

22 (e) Except in juvenile proceedings which are transferred to
23 criminal proceedings, law-enforcement records and files concerning

1 a child or juvenile shall be kept separate from the records and
2 files of adults and not included within the court files.
3 Law-enforcement records and files concerning a child or juvenile
4 shall only be open to inspection pursuant to sections article eight
5 of this chapter.

6 (f) Any person who willfully violates this section is guilty
7 of a misdemeanor and, upon conviction, shall be fined not more than
8 \$1,000, or confined in jail for not more than six months, or both
9 fined and confined. A person convicted of violating this section
10 shall also be liable for damages in the amount of \$300 or actual
11 damages, whichever is greater.

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

16 **§49-17-102. Preservation of records.**

17 The proceedings, records, reports, case histories, and all
18 other papers or documents of or received by the state department in
19 the administration of this chapter shall be filed of record and
20 preserved.

21 **§49-17-103. Confidentiality of juvenile records.**

22 (a) Any findings or orders of the court in a juvenile
23 proceeding shall be known as the "juvenile record" and shall be

1 maintained by the clerk of the court.

2 (b) Records of a juvenile proceeding conducted under this
3 chapter are not public records and shall not be disclosed to anyone
4 unless disclosure is otherwise authorized by this section.

5 (c) Notwithstanding the provisions of subsection (a) of this
6 section, a copy of a juvenile's records shall automatically be
7 disclosed to certain school officials, subject to the following
8 terms and conditions:

9 (1) Only the records of certain juveniles shall be disclosed.
10 These include, and are limited to, cases in which:

11 (A) The juvenile has been charged with an offense which:

12 (i) Involves violence against another person;

13 (ii) Involves possession of a dangerous or deadly weapon; or

14 (iii) Involves possession or delivery of a controlled
15 substance as that term is defined in section one hundred one,
16 article one, chapter sixty-a of this code; and

17 (B) The juvenile's case has proceeded to a point where one or
18 more of the following has occurred:

19 (i) A circuit court judge or magistrate has determined that
20 there is probable cause to believe that the juvenile committed the
21 offense as charged;

22 (ii) A circuit court judge or magistrate has placed the
23 juvenile on probation for the offense;

1 (iii) A circuit court judge or magistrate has placed the
2 juvenile into an improvement period in accordance with section one
3 hundred seven, article eight of this chapters; or

4 (iv) Some other type of disposition has been made of the case
5 other than dismissal.

6 (2) The circuit court for each judicial circuit in West
7 Virginia shall designate one person to supervise the disclosure of
8 juvenile records to certain school officials;

9 (3) If the juvenile attends a West Virginia public school, the
10 person designated by the circuit court shall automatically disclose
11 all records of the juvenile's case to the county superintendent of
12 schools in the county in which the juvenile attends school and to
13 the principal of the school which the juvenile attends, subject to
14 the following:

15 (A) At a minimum, the records shall disclose the following
16 information:

17 (i) Copies of the arrest report;

18 (ii) Copies of all investigations;

19 (iii) Copies of any psychological test results and any mental
20 health records;

21 (iv) Copies of any evaluation reports for probation or
22 facility placement; and

23 (v) Any other material that would alert the school to

1 potential danger that the juvenile may pose to himself, herself or
2 others;

3 (B) The disclosure of the juvenile's psychological test
4 results and any mental health records shall only be made in
5 accordance with subdivision (14) of this subsection;

6 (C) If the disclosure of any record to be automatically
7 disclosed under this section is restricted in its disclosure by the
8 Health Insurance Portability and Accountability Act of 1996
9 Codified at 42 U.S.C. §300gg, 29 U.S.C. §1181, et seq., 42 U.S.C.
10 §1320d, et seq. and any amendments and regulations under the act,
11 the person designated by the circuit court shall provide the
12 superintendent and principal any notice of the existence of the
13 record that is permissible under the act and, if applicable, any
14 action that is required to obtain the record; and

15 (D) When multiple disclosures are required by this subsection,
16 the person designated by the circuit court is required to disclose
17 only material in the juvenile record that had not previously been
18 disclosed to the county superintendent and the principal of the
19 school which the juvenile attends.

20 (4) If the juvenile attends a private school in West Virginia,
21 the person designated by the circuit court shall determine the
22 identity of the highest ranking person at that school and shall
23 automatically disclose all records of a juvenile's case to that person.

1 (5) If the juvenile does not attend school at the time the
2 juvenile's case is pending, the person designated by the circuit
3 court shall not transmit the juvenile's records to any school.
4 However, the person designated by the circuit court shall transmit
5 the juvenile's records to any school in West Virginia which the
6 juvenile subsequently attends.

7 (6) The person designated by the circuit court shall not
8 automatically transmit juvenile records to a school which is not
9 located in West Virginia. Instead, the person designated by the
10 circuit court shall contact the out-of-state school, inform it that
11 juvenile records exist and make an inquiry regarding whether the
12 laws of that state permit the disclosure of juvenile records. If
13 so, the person designated by the circuit court shall consult with
14 the circuit judge who presided over the case to determine whether
15 the juvenile records should be disclosed to the out-of-state
16 school. The circuit judge shall have discretion in determining
17 whether to disclose the juvenile records and shall consider whether
18 the other state's law regarding disclosure provides for sufficient
19 confidentiality of juvenile records, using this section as a guide.
20 If the circuit judge orders the juvenile records to be disclosed,
21 they shall be disclosed in accordance with subdivision (7) of this
22 subsection.

23 (7) The person designated by the circuit court shall transmit

1 the juvenile's records to the appropriate school official under
2 cover of a letter emphasizing the confidentiality of such records
3 and directing the official to consult this section of the code. A
4 copy of this section of the code shall be transmitted with the
5 juvenile's records and cover letter.

6 (8) Juvenile records shall be treated as absolutely
7 confidential by the school official to whom they are transmitted,
8 and nothing contained within the juvenile's records shall be noted
9 on the juvenile's permanent educational record. The juvenile
10 records are to be maintained in a secure location and are not to be
11 copied under any circumstances. However, the principal of a school
12 to whom the records are transmitted shall have the duty to disclose
13 the contents of those records to any teacher who teaches a class in
14 which the subject juvenile is enrolled and to the regular driver of
15 a school bus in which the subject juvenile is regularly transported
16 to or from school, except that the disclosure of the juvenile's
17 psychological test results and any mental health records shall only
18 be made in accordance with subdivision (14) of this subsection.
19 Furthermore, any school official to whom the juvenile's records are
20 transmitted may disclose the contents of such records to any adult
21 within the school system who, in the discretion of the school
22 official, has the need to be aware of the contents of those
23 records.

1 (9) If for any reason a juvenile ceases to attend a school
2 which possesses that juvenile's records, the appropriate official
3 at that school shall seal the records and return them to the
4 circuit court which sent them to that school. If the juvenile has
5 changed schools for any reason, the former school shall inform the
6 circuit court of the name and location of the new school which the
7 juvenile attends or will be attending. If the new school is located
8 within West Virginia, the person designated by the circuit court
9 shall forward the juvenile's records to the juvenile's new school
10 in the same manner as provided in subdivision (7) of this
11 subsection. If the new school is not located within West Virginia,
12 the person designated by the circuit court shall handle the
13 juvenile records in accordance with subdivision (6) of this
14 subsection.

15 If the juvenile has been found not guilty of an offense for
16 which records were previously forwarded to the juvenile's school on
17 the basis of a finding of probable cause, the circuit court shall
18 not forward those records to the juvenile's new school. However,
19 this shall not affect records related to other prior or future
20 offenses. If the juvenile has graduated or quit school or will
21 otherwise not be attending another school, the circuit court shall
22 retain the juvenile's records and handle them as otherwise provided
23 in this article.

1 (10) Under no circumstances shall one school transmit a
2 juvenile's records to another school.

3 (11) Under no circumstances shall juvenile records be
4 automatically transmitted to a college, university or other
5 post-secondary school.

6 (12) No one shall suffer any penalty, civil or criminal, for
7 accidentally or negligently attributing certain juvenile records to
8 the wrong person. However, such person shall have the affirmative
9 duty to promptly correct any mistake that he or she has made in
10 disclosing juvenile records when the mistake is brought to his or
11 her attention. A person who intentionally attributes false
12 information to a certain person shall be subjected to both criminal
13 and civil penalties in accordance with subsection (e) of this
14 section.

15 (13) If a circuit court judge or magistrate has determined
16 that there is probable cause to believe that a juvenile has
17 committed an offense but there has been no final adjudication of
18 the charge, the records which are transmitted by the circuit court
19 shall be accompanied by a notice which clearly states in bold print
20 that there has been no determination of delinquency and that our
21 legal system requires a presumption of innocence.

22 (14) The county superintendent shall designate the school
23 psychologist or psychologists to receive the juvenile's

1 psychological test results and any mental health records. The
2 psychologist designated shall review the juvenile's psychological
3 test results and any mental health records and, in the
4 psychologist's professional judgment, may disclose to the principal
5 of the school that the juvenile attends and other school employees
6 who would have a need to know the psychological test results,
7 mental health records and any behavior that may trigger violence or
8 other disruptive behavior by the juvenile. Other school employees
9 include, but are not limited to, any teacher who teaches a class in
10 which the subject juvenile is enrolled and the regular driver of a
11 school bus in which the subject juvenile is regularly transported
12 to or from school.

13 (c) Notwithstanding the provisions of subsection (a) of this
14 section, juvenile records may be disclosed, subject to the
15 following terms and conditions:

16 (1) If a juvenile case is transferred to the criminal
17 jurisdiction of the circuit court pursuant to subsection (c) or
18 (d), section one hundred nine, article eight of this chapter, the
19 juvenile records shall be open to public inspection.

20 (2) If a juvenile case is transferred to the criminal
21 jurisdiction of the circuit court pursuant to subsection (e), (f)
22 or (g), section one hundred nine, article eight of this chapter,
23 the juvenile records shall be open to public inspection only if the

1 juvenile fails to file a timely appeal of the transfer order, or
2 the Supreme Court of Appeals refuses to hear or denies an appeal
3 which has been timely filed.

4 (3) If a juvenile is fourteen years of age or older and a
5 court has determined there is a probable cause to believe the
6 juvenile committed an offense set forth in subsection (g), section
7 one hundred nine of article eight of this chapter, but the case is
8 not transferred to criminal jurisdiction, the juvenile records
9 shall be open to public inspection pending trial only if the
10 juvenile is released on bond and no longer detained or adjudicated
11 delinquent of the offense.

12 (4) If a juvenile is younger than fourteen years of age and a
13 court has determined there is probable cause to believe that the
14 juvenile committed the crime of murder under section one, two or
15 three, article two, chapter sixty-one of this code, or the crime of
16 sexual assault in the first degree under section three, article
17 eight-b of that chapter, but the case is not transferred to
18 criminal jurisdiction, the juvenile records shall be open to public
19 inspection pending trial only if the juvenile is released on bond
20 and no longer detained or adjudicated delinquent of the offense.

21 (5) Upon a written petition and pursuant to a written order,
22 the circuit court may permit disclosure of juvenile records to:

23 (A) A court, in this state or another state, which has

1 juvenile jurisdiction and has the juvenile before it in a juvenile
2 proceeding;

3 (B) A court, in this state or another state, exercising
4 criminal jurisdiction over the juvenile which requests such records
5 for the purpose of a presentence report or disposition proceeding;

6 (C) The juvenile, the juvenile's parents or legal guardian, or
7 the juvenile's counsel;

8 (D) The officials of a public institution to which the
9 juvenile is committed if they require such records for transfer,
10 parole or discharge; or

11 (E) A person who is conducting research. However, juvenile
12 records may be disclosed for research purposes only upon the
13 condition that information which would identify the subject
14 juvenile or the juvenile's family shall not be disclosed.

15 (6) Notwithstanding any other provision of this code, juvenile
16 records shall be disclosed, or copies made available, to a
17 probation officer upon his or her written request and approved by
18 his or her supervising circuit court judge. The clerk of the court
19 shall file the written request and the judge's approval in the
20 juvenile's record and note therein the date and scope of the actual
21 disclosure. Any probation officer may, without a court order,
22 access relevant juvenile case information contained in any
23 electronic database maintained by or for the Supreme Court of

1 Appeals and share it with any other probation officer in the same
2 or a different circuit.

3 (7) Notwithstanding any other provision of this code, juvenile
4 records shall be disclosed, or copies made available, in response
5 to any lawfully issued subpoena from a federal court or federal
6 agency.

7 (d) Any records open to public inspection pursuant to this
8 section are subject to the same requirements governing the
9 disclosure of adult criminal records.

10 (e) Any person who willfully violates this section is guilty
11 of a misdemeanor and, upon conviction, shall be fined not more than
12 \$1,000, or confined in jail for not more than six months, or both
13 fined and confined. He or she shall also be liable for damages in
14 the amount of \$300 or actual damages, whichever is greater.

15 **§49-17-104. Confidentiality of juvenile records for children who**
16 **become of age while a ward of the state or who have**
17 **been transferred to adult criminal jurisdiction.**

18 (a) One year after the juvenile's eighteenth birthday, or one
19 year after personal or juvenile jurisdiction has terminated,
20 whichever is later, the records of a juvenile proceeding conducted
21 under this chapter, including, but not limited to, law-enforcement
22 files and records, may be kept in a separate secure confidential
23 place and the records may not be inspected except by order of the

1 circuit court.

2 (b) The records of a juvenile proceeding in which a juvenile
3 was transferred to criminal jurisdiction pursuant to section one
4 hundred nine of article eight of this chapter shall be kept in a
5 separate secure confidential place and the records may not be
6 inspected except by order of the circuit court if the juvenile is
7 subsequently acquitted or found guilty only of an offense other
8 than an offense upon which the waiver or order of transfer was
9 based, or if the offense upon which the waiver or order of transfer
10 was based is subsequently dismissed.

11 (c) To keep the confidentiality of juvenile records, they
12 shall be returned to the circuit court in which the case was
13 pending and be kept in a separate confidential file. The records
14 shall be physically marked to show that they are to remain
15 confidential and shall be securely kept and filed in a manner so
16 that no one can have access to determine the identity of the
17 juvenile, except upon order of the circuit court.

18 (d) Marking the juvenile records to show they are to remain
19 confidential has the legal effect of extinguishing the offense as
20 if it never occurred.

21 (e) The records of a juvenile convicted under the criminal
22 jurisdiction of the circuit court pursuant to subdivision (1),
23 subsection (d), section one hundred nine, article eight of this

1 chapter may not be marked and kept as confidential.

2 (f) Any person who willfully violates this section is guilty
3 of a misdemeanor and, upon conviction thereof, shall be fined not
4 more than \$1,000, or confined in jail for not more than six months,
5 or both so fined and confined, and is liable for damages in the
6 amount of \$300 or actual damages, whichever is greater.

7 **§49-17-105. Juvenile justice database.**

8 The West Virginia Supreme Court of Appeals is responsible for
9 collecting, compiling and disseminating information in the juvenile
10 justice database. Notwithstanding any other provision of this code
11 to the contrary, the court shall grant the Division of Criminal
12 Justice Services access to confidential juvenile records for the
13 limited purpose of the collection and analysis of statistical data:
14 Provided, That the division shall keep the records confidential and
15 not publish any information that would identify any individual
16 juvenile.

17 **ARTICLE 18. SUPPORT AND SUPPORT ORDERS.**

18 **§49-18-101. Support of child placed in home or institution or**
19 **under guardianship.**

20 (a) If it appears upon the hearing of a petition under this
21 chapter that a person legally liable for the support of the child
22 is able to contribute to the support of such child, the court or

1 judge shall order the person to pay the department, institution,
2 organization, or private person to whom the child was committed, a
3 reasonable sum from time to time for the support, maintenance, and
4 education of the child pursuant to article eleven, chapter
5 forty-eight of this code.

6 (b) The court or judge may require the person liable for the
7 support to give reasonable security for payment. Upon failure to
8 give security or to pay, the court or judge may enforce obedience
9 by proceeding as for contempt of court. The court or judge may
10 modify a child support award pursuant to section one hundred five,
11 article eleven, chapter forty-eight of this code.

12 **§49-18-102. Enforcement of order for support from wages.**

13 If a person ordered to pay for the support, maintenance and
14 education of a child pursuant to a proceeding under chapter
15 forty-eight or forty-nine of this code is employed for wages,
16 salary or commission, the court or judge shall order that the sum
17 to be paid by him or her to the guardian, institution, organization
18 or person having custody of such child, out of such wages, salary
19 or commission, pursuant to section one hundred five, article
20 fourteen, chapter forty-eight of this code. The court or judge may
21 also order the person to report to the court or judge, from time to
22 time, his or her place of employment and the amount earned by him
23 or her. Upon his or her failure to obey the order of the court or

1 judge, after proper notice and hearing, he or she may be punished
2 as for contempt of court.

3 **ARTICLE 19. MISSING CHILDREN INFORMATION ACT.**

4 **§49-19-101. Definitions.**

5 As used in this article:

6 "Child" means an individual under the age of eighteen years
7 who is not emancipated;

8 "Clearinghouse" means the West Virginia missing children
9 information clearinghouse;

10 "Custodian" means a parent, guardian, custodian or other
11 person who exercises legal physical control, care or custody of a
12 child;

13 "Missing child" means a child whose whereabouts are unknown to
14 the child's custodian and the circumstances of whose absence
15 indicate that:

16 (1) The child did not leave the care and control of the
17 custodian voluntarily and the taking of the child was not
18 authorized by law; or

19 (2) The child voluntarily left the care and control of his or
20 her custodian without the custodian's consent and without intent to
21 return;

22 "Missing child report" means information that is:

23 (1) Given to a law-enforcement agency on a form used for

1 sending information to the national crime information center; and

2 (2) About a child whose whereabouts are unknown to the
3 reporter and who is alleged in the form submitted by the reporter
4 to be missing;

5 "Possible match" means the similarities between an
6 unidentified body of a child and a missing child that would lead
7 one to believe they are the same child;

8 "Reporter" means the person who reports a missing child; and

9 "State agency" means an agency of the state, political
10 subdivision of the state or public postsecondary educational
11 institution.

12 **§49-19-102. Clearinghouse function.**

13 (a) The Missing Children Information Clearinghouse is
14 established under the West Virginia State Police. The State
15 Police:

16 (1) Shall provide for the administration of the clearinghouse;
17 and

18 (2) May promulgate rules in accordance with article three,
19 chapter twenty-nine-a of this code to carry out the provisions of
20 this article.

21 (b) The clearinghouse is a central repository of information
22 on missing children and shall be used by all law-enforcement
23 agencies in this state.

- 1 (c) The clearinghouse shall:
- 2 (1) Establish a system of intrastate communication of
3 information relating to missing children;
- 4 (2) Provide a centralized file for the exchange of information
5 on missing children and unidentified bodies of children within the
6 state;
- 7 (3) Communicate with the National Crime Information Center for
8 the exchange of information on missing children suspected of
9 interstate travel;
- 10 (4) Collect, process, maintain and disseminate accurate and
11 complete information on missing children;
- 12 (5) Provide a statewide toll-free telephone line for the
13 reporting of missing children and for receiving information on
14 missing children;
- 15 (6) Disseminate to custodians, law-enforcement agencies, the
16 state Department of Education, the Bureau for Children and Families
17 and the general public information that explains how to prevent
18 child abduction and what to do if a child becomes missing;
- 19 (7) Compile statistics relating to the incidence of missing
20 children within the state;
- 21 (8) Provide training materials and technical assistance to
22 law-enforcement agencies and social services agencies pertaining to
23 missing children; and

1 (9) Establish a media protocol for disseminating information
2 pertaining to missing children.

3 (d) The clearinghouse shall print and distribute posters,
4 flyers and other forms of information containing descriptions of
5 missing children.

6 (e) The State Police may accept public or private grants,
7 gifts and donations to assist in carrying out the provisions of
8 this article.

9 **§49-19-103. State Department of Education; missing children**
10 **program.**

11 (a) The State Department of Education shall develop and
12 administer a program for the location of missing children who may
13 be enrolled in the West Virginia school system, including private
14 schools, and for the reporting of children who may be missing or
15 who may be unlawfully removed from schools.

16 (b) The program shall include the use of information received
17 from the clearinghouse and shall be coordinated with the operations
18 of the clearinghouse.

19 (c) The State Board of Education may promulgate rules in
20 accordance with article three, chapter twenty-nine-a of this code
21 for the operation of the program and shall require the
22 participation of all school districts and state-accredited private
23 schools in this state.

1 **§49-19-104. Information to clearinghouse.**

2 Every law-enforcement agency in West Virginia shall provide to
3 the clearinghouse any information the law-enforcement agency has
4 that would assist in locating or identifying a missing child.

5 **§49-19-105. Custodian request for information.**

6 (a) Upon written request made to a law-enforcement agency by
7 the custodian of a missing child, the law-enforcement agency shall
8 request from the clearinghouse information concerning the child
9 that may aid the custodian in locating or identifying the child.

10 (b) A law-enforcement agency to which a request has been made
11 pursuant to subsection (a) of this section shall report to the
12 custodian on the results of its inquiry within fourteen calendar
13 days after the day the written request is received by the
14 law-enforcement agency.

15 **§49-19-106. Missing child report forms.**

16 (a) The clearinghouse shall distribute missing child report
17 forms to law-enforcement agencies in the state.

18 (b) A missing child report may be made to a law-enforcement
19 agency in person or by telephone or other indirect method of
20 communication and the person taking the report may enter the
21 information on the form for the reporter. A missing child report
22 form may be completed by the reporter and delivered to a
23 law-enforcement office.

1 (c) A copy of the missing child report form shall be filed
2 with the clearinghouse.

3 **§49-19-107. Law-enforcement requirements; missing child reports;**
4 **unidentified bodies.**

5 (a) A law-enforcement agency, upon receiving a missing child
6 report, shall:

7 (1) Immediately start an investigation to determine the
8 present location of the child if it determines that the child is in
9 danger; and

10 (2) Enter the name of the missing child into the clearinghouse
11 and the national crime information center missing person file if
12 the child meets the center's criteria, with all available
13 identifying features, including dental records, fingerprints, other
14 physical characteristics and a description of the clothing worn
15 when the missing child was last seen.

16 (b) Information not immediately available shall be obtained as
17 soon as possible by the law-enforcement agency and entered into the
18 clearinghouse and the national crime information center file as a
19 supplement to the original entry.

20 (c) All West Virginia law-enforcement agencies shall enter
21 information about all unidentified bodies of children found in
22 their jurisdiction into the clearinghouse and the national crime
23 information center unidentified person file, including all

1 available identifying features of the body and a description of the
2 clothing found on the body. If an information entry into the
3 national crime information center file results in an automatic
4 entry of the information into the clearinghouse, the
5 law-enforcement agency is not required to make a direct entry of
6 that information into the clearinghouse.

7 **§49-19-108. Release of dental records; immunity.**

8 (a) At the time a missing child report is made, the
9 law-enforcement agency to which the missing child report is given
10 may, when feasible and appropriate, provide a dental record release
11 form to the parent, custodian, health care surrogate or other legal
12 entity authorized to release the dental records of the missing
13 child. The law-enforcement agency shall endorse the dental record
14 release form with a notation that a missing child report has been
15 made in compliance with this article. When the dental record
16 release form is properly completed by the parent, custodian, health
17 care surrogate or other legal entity authorized to release the
18 dental records of the missing child and contains the endorsement,
19 the form is sufficient to permit a dentist or physician in this
20 state to release dental records relating to the missing child to
21 the law-enforcement agency.

22 (b) A circuit court judge may for good cause shown authorize
23 the release of dental records of a missing child to a

1 law-enforcement agency.

2 (c) A law-enforcement agency which receives dental records
3 under subsection (a) or (b) of this section shall send the dental
4 records to the clearinghouse.

5 (d) A dentist or physician who releases dental records to a
6 person presenting a proper release executed or ordered pursuant to
7 this section is immune from civil liability or criminal prosecution
8 for the release of the dental records.

9 **§49-19-109. Cross-checking and matching.**

10 (a) The clearinghouse shall, in accordance with national crime
11 information center policies and procedures, cross-check and attempt
12 to match unidentified bodies with descriptions of missing children.
13 When the clearinghouse discovers a possible match between an
14 unidentified body and a missing child description, the
15 clearinghouse shall notify the appropriate law-enforcement
16 agencies.

17 (b) A law-enforcement agency that receives notice of a
18 possible match shall make arrangements for positive identification.
19 If a positive identification is made, the law-enforcement agency
20 shall complete and close the investigation with notification to the
21 clearinghouse.

22 **§49-19-110. Interagency cooperation.**

23 (a) State agencies and public and private schools shall

1 cooperate with a law-enforcement agency that is investigating a
2 missing child report and shall furnish any information, including
3 confidential information, that will assist the law-enforcement
4 agency in completing the investigation.

5 (b) Information provided by a state agency or a public or
6 private school may not be released to any person outside the
7 law-enforcement agency or the clearinghouse, except as provided by
8 rules of the West Virginia state police.

9 **§49-19-111. Confidentiality of records.**

10 (a) The state police shall promulgate rules according to
11 article three, chapter twenty-nine-a of this code to provide for
12 the classification of information and records as confidential that:

13 (1) Are otherwise confidential under state or federal law or
14 rules promulgated pursuant to state or federal law;

15 (2) Are related to the investigation by a law-enforcement
16 agency of a missing child or an unidentified body, if the State
17 Police, in consultation with the law-enforcement agency, determines
18 that release of the information would be deleterious to the
19 investigation;

20 (3) Are records or notations that the clearinghouse maintains
21 for internal use in matters relating to missing children and
22 unidentified bodies and the State Police determines that release of
23 the internal documents might interfere with an investigation by a

1 law-enforcement agency in West Virginia or any other jurisdiction;
2 or

3 (4) Are records or information that the State Police
4 determines might interfere with an investigation or otherwise harm
5 a child or custodian.

6 (b) The rules may provide for the sharing of confidential
7 information with the custodian of the missing child.

8 **§49-19-112. Attorney general to require compliance.**

9 The Attorney General shall require each law-enforcement agency
10 to comply with the provisions of the Missing Children Information
11 Act and may seek writs of mandamus or other appropriate remedies to
12 enforce this article.

13 **§49-19-113. Agencies that receive report.**

14 (a) Upon completion of the missing child report the
15 law-enforcement agency shall immediately forward the contents of
16 the report to the missing children information clearinghouse and
17 the national crime information center's missing person file:
18 Provided, That if an information entry into the national crime
19 information center file results in an automatic entry of the
20 information into the clearinghouse, the law-enforcement agency is
21 not required to make a direct entry of that information into the
22 clearinghouse.

23 (b) Within fifteen days after completion of the report, if the

1 child is less than thirteen years of age the law-enforcement agency
2 may, when appropriate, forward the contents of the report to the
3 last:

4 (1) Child care center or child care home in which the child
5 was enrolled; or

6 (2) School the child attended in West Virginia, if any.

7 (c) A law-enforcement agency involved in the investigation of
8 a missing child shall:

9 (1) Update the initial report filed by the agency that
10 received notification of the missing child upon the discovery of
11 new information concerning the investigation;

12 (2) Forward the updated report to the appropriate agencies and
13 organizations;

14 (3) Search the national crime information center's wanted
15 person file for reports of arrest warrants issued for persons who
16 allegedly abducted or unlawfully retained children and compare
17 these reports to the missing child's national crime information
18 center's missing person file; and

19 (4) Notify all law-enforcement agencies involved in the
20 investigation, the missing children information clearinghouse, and
21 the national crime information center when the missing child is
22 located.

23 **§49-19-114. Clearinghouse Advisory Council; members, appointments**

1 and expenses; appointment, duties and compensation
2 of director.

3 (a) The Clearinghouse Advisory Council is continued as a body
4 corporate and politic, constituting a public corporation and
5 government instrumentality. The council shall consist of eleven
6 members, who are knowledgeable about and interested in issues
7 relating to missing or exploited children, as follows:

8 (1) Six members to be appointed by the Governor, with the
9 advice and consent of the Senate, with not more than four belonging
10 to the same political party, three being from different
11 congressional districts of the state and, as nearly as possible,
12 providing broad state geographical distribution of members of the
13 council, and at least one representing a nonprofit organization
14 involved with preventing the abduction, runaway or exploitation of
15 children or locating missing children;

16 (2) The Secretary of the Department of Health and Human
17 Resources or his or her designee;

18 (3) The Superintendent of the West Virginia State Police or
19 his or her designee;

20 (4) The State Superintendent of Schools or his or her
21 designee;

22 (5) The Director of the Criminal Justice and Highway Safety
23 Division or his or her designee; and

1 (6) The Commissioner of the Bureau for Children and Families
2 or his or her designee.

3 (b) The Governor shall appoint the six council members for
4 staggered terms. The terms of the members first taking office on
5 or after the effective date of this legislation shall expire as
6 designated by the Governor. Each subsequent appointment shall be
7 for a full three-year term. Any appointed member whose term is
8 expired shall serve until a successor has been duly appointed and
9 qualified. Any person appointed to fill a vacancy shall serve only
10 for the unexpired term. A member is eligible for only one
11 successive reappointment. A vacancy shall be filled by the
12 Governor in the same manner as the original appointment was made.

13 (c) Members of the council are not entitled to compensation
14 for services performed as members but are entitled to reimbursement
15 for all reasonable and necessary expenses actually incurred in the
16 performance of their duties in a manner consistent with the
17 guidelines of the Travel Management Office of the Department of
18 Administration.

19 (d) A majority of serving members constitutes a quorum for the
20 purpose of conducting business. The chair of the council shall be
21 designated by the Governor from among the appointed council members
22 who represent nonprofit organizations involved with preventing the
23 abduction, runaway or exploitation of children or locating missing

1 children. The term of the chair shall run concurrently with his or
2 her term of office as a member of the council. The council shall
3 conduct all meetings in accordance with the open governmental
4 meetings law pursuant to article nine-a, chapter six of this code.

5 (e) The employee of the West Virginia State Police who is
6 primarily responsible for the clearinghouse established by section
7 three of this article shall serve as the executive director of the
8 council. He or she shall receive no additional compensation for
9 service as the executive director of the council but shall be
10 reimbursed for any reasonable and necessary expenses actually
11 incurred in the performance of his or her duties as executive
12 director in a manner consistent with the guidelines of the Travel
13 Management Office of the Department of Administration.

14 (f) The expenses of council members and the executive director
15 shall be reimbursed from funds provided by foundation grants,
16 in-kind contributions or funds obtained pursuant to subsection (b),
17 section one hundred sixteen of this article.

18 (g) The executive director shall provide or obtain information
19 necessary to support the administrative work of the council and, to
20 that end, may contract with one or more nonprofit organizations or
21 state agencies for research and administrative support.

22 (h) The executive director of the council shall be available
23 to the Governor and to the Speaker of the House of Delegates and

1 the President of the Senate to analyze and comment upon proposed
2 legislation and rules which relate to or materially affect missing
3 or exploited children.

4 (i) The council shall prepare and publish an annual report of
5 its activities and accomplishments and submit it to the Governor
6 and to the Joint Committee on Government and Finance on or before
7 December 15 of each year.

8 **§49-19-115. Powers and duties of clearinghouse advisory council.**

9 The council shall prepare a comprehensive strategic plan and
10 recommendation of programs in furtherance thereof that will support
11 efforts to prevent the abduction, runaway and exploitation, or any
12 thereof, of children to locate missing children; advise the West
13 Virginia state police regarding operation of the clearinghouse and
14 its other responsibilities under this article; and cooperate with
15 and coordinate the efforts of state agencies and private
16 organizations involved with issues relating to missing or exploited
17 children. The council may seek public and private grants,
18 contracts, matching funds and procurement arrangements from the
19 state and federal government, private industry and other agencies
20 in furtherance of its mission and programs. An initial
21 comprehensive strategic plan that will support and foster efforts
22 to prevent the abduction, runaway and exploitation of children and
23 to locate missing children shall be developed and provided to the

1 Governor, the Speaker of the House of Delegates and the President
2 of the Senate no later than July 1, 2015, and shall include, but
3 not be limited to, the following:

4 (1) Findings and determinations regarding the extent of the
5 problem in this state related to: (A) Abducted children; (B)
6 runaway children; and (C) exploited children;

7 (2) Findings and determinations identifying the systems, both
8 public and private, existing in the state to prevent the abduction,
9 runaway or exploitation of children and to locate missing children
10 and assessing the strengths and weaknesses of those systems and the
11 clearinghouse;

12 (3) The inclusion of exploited children within the functions
13 of the clearinghouse. For purposes of this article, an exploited
14 child is a person under the age of eighteen years who has been:
15 (A) Used in the production of pornography; (B) subjected to sexual
16 exploitation or sexual offenses under article eight-b, chapter
17 sixty-one of this code; or (C) employed or exhibited in any
18 injurious, immoral or dangerous business or occupation in violation
19 of sections five through eight, article eight, chapter sixty-one of
20 this code;

21 (4) Recommendations of legislative changes required to improve
22 the effectiveness of the clearinghouse and other efforts to prevent
23 abduction, runaway or exploitation of children and to locate

1 missing children. Those recommendations shall consider the
2 following:

3 (A) Interaction of the clearinghouse with child custody
4 proceedings;

5 (B) Involvement of hospitals, child care centers and other
6 private agencies in efforts to prevent child abduction, runaway or
7 exploitation and to locate missing children;

8 (C) Publication of a directory of and periodic reports
9 regarding missing children;

10 (D) Required reporting by public and private agencies and
11 penalties for failure to report and false reporting;

12 (E) Removal of names from the list of missing children;

13 (F) Creating of an advocate for missing and exploited
14 children;

15 (G) State funding for the clearinghouse and efforts to prevent
16 the abduction, runaway and exploitation of children and to locate
17 missing children;

18 (H) Mandated involvement of state agencies, such as
19 publication of information regarding missing children in existing
20 state publications and coordination with the state registrar of
21 vital statistics under section twelve-b, article five, chapter
22 sixteen of this code; and

23 (I) Expanded requirement for boards of education to notify the

1 clearinghouse in addition to local law-enforcement agencies under
2 section five-c, article two, chapter eighteen of this code or if a
3 birth certificate or school record received appears to be
4 inaccurate or fraudulent and to receive clearinghouse approval
5 before releasing records;

6 (5) Methods that will coordinate and engender collaborative
7 efforts among organizations throughout the state, whether public or
8 private, involved with missing or exploited children;

9 (6) Plans for the use of technology in the clearinghouse and
10 other efforts related to missing or exploited children;

11 (7) Compliance of the clearinghouse, state law and all rules
12 promulgated pursuant thereto with applicable federal law so as to
13 enhance opportunities for receiving federal grants;

14 (8) Consultation with the State Board of Education and other
15 agencies responsible for promulgating rules under this article;

16 (9) Possible methods for identifying missing children prior to
17 enrollment in a public or nonpublic school;

18 (10) The feasibility and effectiveness of utilizing the
19 federal parent locator service in locating missing children; and

20 (11) Programs for voluntary fingerprinting.

21 **§49-19-116. Public-private partnerships; funding.**

22 (a) In furtherance of its mission, the clearinghouse council
23 is authorized to enter into contracts or joint venture agreements

1 with federal and state agencies; with nonprofit corporations
2 organized pursuant to the corporate laws of this state or other
3 jurisdictions that are qualified under Section 501(c)(3) of the
4 Internal Revenue Code; and with other organizations that conduct
5 research, make grants, improve educational programs and work for
6 the prevention of missing or exploited children and to locate
7 missing children. All contracts and joint venture agreements must
8 be approved by a majority vote of the council. The council may
9 also enter into such contractual agreements for consideration or
10 recompense to it even though such entities are funded from sources
11 other than the state. Members of the council are not prohibited
12 from sitting on the boards of directors of any contracting private
13 nonprofit corporation, foundation or firm: *Provided*, That members
14 of the council are not be exempt from the provisions of chapter
15 six-b of this code.

16 (b) The council shall solicit and is authorized to receive and
17 accept gifts or grants from private foundations, corporations,
18 individuals, devises and bequests or from other lawful sources.
19 Such funds shall be paid into a special account in the State
20 Treasury for the use and benefit of the council.

21 **ARTICLE 20. MISCELLANEOUS PROVISIONS.**

22 **§49-20-101. Exercise of powers and jurisdiction by judge in**
23 **vacation.**

1 The powers and jurisdiction of the court, under the provisions
2 of this chapter, may be exercised by the judge in vacation.

3 **§49-20-102. Procedure for appealing decisions.**

4 Cases under this chapter, if tried in any inferior court, may
5 be reviewed by writ of error or appeal to the circuit court, and if
6 tried or reviewed in a circuit court, by writ of error or appeal to
7 the Supreme Court of Appeals.

8 **§49-20-103. Proceedings may not be evidence against child, or be**
9 **published; adjudication is not a conviction and not**
10 **a bar to civil service eligibility.**

11 Any evidence given in any cause or proceeding under this
12 chapter, or any order, judgment or finding therein, or any
13 adjudication upon the status of juvenile delinquent heretofore made
14 or rendered, shall not in any civil, criminal or other cause or
15 proceeding whatever in any court, be lawful or proper evidence
16 against such child for any purpose whatsoever except in subsequent
17 cases under this chapter involving the same child; nor shall the
18 name of any child, in connection with any proceedings under this
19 chapter, be published in any newspaper without a written order of
20 the court; nor shall any such adjudication upon the status of any
21 child by a juvenile court operate to impose any of the civil
22 disabilities ordinarily imposed by conviction, nor shall any child
23 be deemed a criminal by reason of such adjudication, nor shall such

1 adjudication be deemed a conviction, nor shall any such
2 adjudication operate to disqualify a child in any future civil
3 service examination, appointment, or application.

4 **§49-20-104. General provisions relating to court orders regarding**
5 **custody; promulgation of rules.**

6 (a) The Supreme Court of Appeals, in consultation with the
7 Department of Health and Human Resources and the Division of
8 Juvenile Services in order to eliminate unnecessary state funding
9 of out-of-home placements where federal funding is available, shall
10 develop and disseminate form court orders to effectuate provisions
11 of chapter forty-nine of this code which authorize disclosure and
12 transfer of juvenile records between agencies while requiring
13 maintenance of confidentiality, the provisions of 142 U.S.C.
14 Section 620, et seq., and 42 U.S.C. Section 670, et seq., relating
15 to the promulgation of uniform court orders for placement of minor
16 children and the regulations promulgated thereunder, for use in the
17 magistrate and circuit courts of the state.

18 (b) Circuit judges and magistrates, upon being supplied the
19 form orders required by subsection (a) of this section, shall act
20 to ensure the proper form order is entered in such case so as to
21 allow federal funding of eligible out-of-home placements.

22 **§49-20-105. Guardianship of estate of child not affected by**
23 **chapter.**

1 This chapter may not be construed to give the guardian
2 appointed hereunder the guardianship of the estate of the child, or
3 to change the age of minority for any other purpose except the
4 custody of the child.

5 The guardian of the estate of a child committed to
6 guardianship hereunder shall furnish, at such times and in such
7 form as may be required, full information concerning the property
8 of the child to the state department or to the court or judge
9 before whom the case of any such child is heard.

10 **§49-20-106. Contributing to delinquency or neglect of a child;**
11 **proof; suspended sentence; maintenance and care;**
12 **custody.**

13 (a) A person who by any act or omission contributes to,
14 encourages or tends to cause the delinquency or neglect of any
15 child, including, but not limited to, aiding or encouraging any
16 such child to habitually or continually refuse to respond, without
17 just cause, to the lawful supervision of such child's parents,
18 guardian or custodian or to be habitually absent from school
19 without just cause, shall be guilty of a misdemeanor and, upon
20 conviction thereof, shall be fined not less than \$50 nor more than
21 \$500, or confined in jail for a period not exceeding one year, or
22 both fined and confined.

23 (b) In addition to any penalty provided under this section and

1 any restitution which may be ordered by the court under article
2 eleven-a, chapter sixty-one of this code, the court may order any
3 person convicted under this section to pay all or any portion of
4 the cost of medical, psychological or psychiatric treatment of the
5 child resulting from the act or acts for which the person is
6 convicted, whether or not the child is considered to have sustained
7 bodily injury.

8 (c) This section does not apply to any parent, guardian or
9 custodian who fails or refuses, or allows another person to fail or
10 refuse, to supply a child under the care, custody or control of
11 such parent, guardian or custodian with necessary medical care,
12 when such medical care conflicts with the tenets and practices of
13 a recognized religious denomination or order of which such parent,
14 guardian or custodian is an adherent or member.

15 (d) In finding a person guilty of contributing to the
16 delinquency of a child, it shall not be necessary to prove that the
17 child has actually become delinquent, if it appears from the
18 evidence that the accused is guilty of conduct or of an act of
19 neglect or omission of duty on his or her part toward the child
20 which would tend to bring about or to encourage the delinquency.

21 (e) A court or judge, upon such convictions as are imposed in
22 accordance with this chapter, may:

23 (1) Suspend the sentence of a person found guilty of

1 contributing to the delinquency of a child;

2 (2) Stay or postpone the enforcement of execution of sentence;

3 or

4 (3) Release the person from custody.

5 (f) If the sentence of the person found guilty is suspended,
6 the court or judge may make it a condition of suspending sentence
7 that the person pay for whatever treatment and care may be required
8 for the welfare of such child, and for its support and maintenance
9 while in the custody of the department, person, or institution, and
10 any other expense that may have resulted from, or be necessary
11 because of, the act or acts of the person found guilty.

12 (g) The conditions upon which the sentence of a person found
13 guilty of contributing to the delinquency, or to the neglect of any
14 child, may be suspended, may include the furnishing of a good and
15 sufficient bond to the State of West Virginia in such penal sum as
16 the court shall determine, not exceeding \$1,000, conditioned upon:

17 (1) Furnishing whatever treatment and care may be required for
18 the welfare of such child;

19 (2) Doing whatever may be calculated to secure obedience to
20 the law or to remove the cause of delinquency, or neglect; and

21 (3) Payment of such amount as the court may order, not
22 exceeding \$20 per month, for the support, care, and maintenance of
23 the child to whose delinquency the person contributed. The sum

1 shall be expended under the order of the court or judge for the
2 purposes enumerated.

3 (h) (1) The penalty of a bond given upon suspension of sentence
4 which becomes forfeited shall be recoverable without separate suit.
5 The court or judge may cause citation or summons to issue to the
6 principal and surety, requiring that they appear at a time named by
7 the court or judge, not less than ten nor more than twenty days
8 from the issuance of the summons, and show cause why judgment
9 should not be entered for the penalty of such bond and execution
10 issued against the property of the principal and of the surety.
11 Upon failure to appear, or failure to show sufficient cause, the
12 court shall enter judgment in behalf of the State of West Virginia
13 against the principal and surety in an amount not to exceed the
14 penalty of the bond plus costs.

15 (2) Any money collected or paid upon an execution, or upon the
16 bond, shall be deposited with the clerk of the court in which the
17 bond was given. The money shall be applied first to the payment of
18 all court costs and then to the treatment, care, or maintenance of
19 the child for whose delinquency conviction was had. If any money
20 so collected is not required for these purposes, it shall be paid
21 within one year into the State Treasury.

22 (i) If it appear to the satisfaction of the court or judge at
23 any time while a suspension of sentence or stay of execution

1 remains in effect, that the sentence ought to be enforced, the
2 court or judge may enforce the sentence. A jail sentence shall
3 commence from the date upon which the sentence is so ordered to be
4 enforced.

5 (j) If the conditions of suspension are complied with, the
6 sentence shall remain suspended, subject to enforcement upon the
7 violation of any of the conditions imposed. Upon a failure to
8 comply with any of the conditions imposed, the sentence shall be
9 enforced and any bond given to insure the performance of the
10 conditions shall be forfeited.

11 (k) A sentence shall not be suspended, or final judgment or
12 execution stayed, for a period exceeding two years. At the end of
13 two years from the time of imposition of sentence or sooner in the
14 discretion of the court or judge, the defendant shall be finally
15 released and discharged.

16 (l) Where a person is found guilty of contributing to the
17 delinquency of a child, the court or judge may place the child in
18 the temporary custody of the department or of some responsible
19 person or approved institution.

20 **§49-20-107. Custody of child by convicted person.**

21 If the guilty person had custody of the child prior to
22 conviction, the court or judge may, on suspending sentence, permit
23 the child to remain in the custody of the person, and make it a

1 condition of suspending sentence that the person provides whatever
2 treatment and care may be required for the welfare of the child,
3 and shall do whatever may be calculated to secure obedience to the
4 law or to remove the cause of such delinquency.

5 **§49-20-108. Interference with disposition of child punishable as**
6 **contempt of court.**

7 A person who interferes with the direction of disposition of
8 a child in accordance with an order of the court or judge made in
9 pursuance of this chapter, or with the department, or a probation
10 or other officer of the court in carrying out the directions of the
11 court or judge under such an order, shall be subject to punishment
12 as for contempt of court.

13 **§49-20-109. Enticing child from custody.**

14 A person who personally or by agent entices or forcibly
15 removes a child from a custody in which the child was placed under
16 this chapter shall be guilty of a misdemeanor and, upon conviction
17 shall be fined not more than \$100, or confined in jail not more
18 than six months, or fined and confined.

19 **§49-20-110. Quarterly status review and yearly permanency**
20 **hearings.**

21 (a) For each child who remains in foster care as a result of
22 a juvenile proceeding or as a result of a child abuse and neglect

1 proceeding, the circuit court with the assistance of the
2 multidisciplinary treatment team shall conduct quarterly status
3 reviews in order to determine the safety of the child, the
4 continuing necessity for and appropriateness of the placement, the
5 extent of compliance with the case plan, and the extent of progress
6 which has been made toward alleviating or mitigating the causes
7 necessitating placement in foster care, and to project a likely
8 date by which the child may be returned to and safety maintained in
9 the home or placed for adoption or legal guardianship. Quarterly
10 status reviews shall commence three months after the entry of the
11 placement order. The permanency hearing provided in subsection (c)
12 of this section may be considered a quarterly status review.

13 (b) For each transitioning adult as that term is defined in
14 section two hundred one, article one of this chapter who remains in
15 foster care, the circuit court shall conduct status review hearings
16 as described in subsection (a) of this section once every three
17 months until permanency is achieved.

18 (c) For each child or transitioning adult who continues to
19 remain in foster care, the circuit court shall conduct a permanency
20 hearing no later than twelve months after the date the child or
21 transitioning adult is considered to have entered foster care, and
22 at least once every twelve months thereafter until permanency is
23 achieved. For purposes of permanency planning for transitioning

1 adults, the circuit court shall make factual findings and
2 conclusions of law as to whether the department made reasonable
3 efforts to finalize a permanency plan to prepare a transitioning
4 adult for emancipation or independence or another approved
5 permanency option such as, but not limited to, adoption or legal
6 guardianship pursuant to the West Virginia Guardianship and
7 Conservatorship Act.

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

12 **§49-20-111. Emancipation.**

13 (a) A child over the age of sixteen may petition a court to be
14 declared emancipated. The parents or custodians shall be made
15 respondents and, in addition to personal service thereon, there
16 shall be publication as a Class II legal advertisement in
17 compliance with article three, chapter fifty-nine of this code.

18 (b) Upon a showing that such child can provide for his or her
19 physical and financial well-being and has the ability to make
20 decisions for himself or herself, the court may for good cause
21 shown declare the child emancipated. The child shall thereafter
22 have full capacity to contract in his or her own right and the
23 parents or custodians shall have no right to the custody and

1 control of such child or duty to provide the child with care and
2 financial support.

3 (c) A child over the age of sixteen years who marries shall
4 be emancipated by operation of law. An emancipated child shall
5 have all of the privileges, rights and duties of an adult,
6 including the right of contract, except that such child shall
7 remain a child as defined for the purposes of articles eight and
8 nine of this chapter.

9 **§49-20-112. Penalties.**

10 A person who violates an order, rule, or regulation made under
11 the authority of this chapter, or who violates this chapter for
12 which punishment has not been specifically provided, shall be
13 guilty of a misdemeanor and, upon conviction shall be fined not
14 less than \$10 nor more than \$100, or confined in jail not less than
15 five days nor more than six months, or both fined and confined.

16 **§49-20-113. Certificate of need not required.**

17 (a) A certificate of need, as provided in article two-d,
18 chapter sixteen of this code, is not required by an entity
19 proposing behavioral health care facilities or behavioral health
20 care services for children who are placed out of their home, or who
21 are at imminent risk of being placed out of their home, if a
22 summary review is performed in accordance with this section.

23 (b) A summary review of proposed health care facilities or

1 health care services for children who are placed out of their home,
2 or who are at imminent risk of being placed out of their home, is
3 initiated when the proposal is recommended to the health care cost
4 review authority by the secretary of the Department of Health and
5 Human Resources and the secretary has made the following findings:

6 (1) That the proposed facility or service is consistent with
7 the state health plan;

8 (2) That the proposed facility or service is consistent with
9 the department's programmatic and fiscal plan for behavioral health
10 services for children with mental health and addiction disorders;

11 (3) That the proposed facility or service contributes to
12 providing services that are child and family driven, with priority
13 given to keeping children in their own homes;

14 (4) That the proposed facility or service will contribute to
15 reducing the number of child placements in out-of-state facilities
16 by making placements available in in-state facilities;

17 (5) That the proposed facility or service contributes to
18 reducing the number of child placements in in-state or out-of-state
19 facilities by returning children to their families, placing them in
20 foster care programs or making available school-based and
21 out-patient services; and

22 (6) If applicable, that the proposed services will be
23 community-based, locally accessible and provided in an appropriate

1 setting consistent with the unique needs and potential of each
2 child and his or her family.

3 (c) The secretary's findings required by subsection (b) of
4 this section shall be filed with the secretary's recommendation and
5 appropriate documentation. If the secretary's findings are
6 supported by the accompanying documentation, the proposal shall not
7 require a certificate of need.

8 (d) Any entity that does not qualify for summary review shall
9 be subject to certificate of need review.

10 (e) Notwithstanding any other provision of law to the
11 contrary, the provision of regular or therapeutic foster care
12 services does not constitute a behavioral health care facility or
13 a behavioral health care service that would subject it to the
14 summary review procedure established in this section or to the
15 certificate of need requirements provided in article two-d, chapter
16 sixteen of this code.

17 **§49-20-114. Payment of services.**

18 At any time during any proceedings brought pursuant to
19 articles eight and thirteen of this chapter, the court may upon its
20 own motion, or upon a motion of any party, order the West Virginia
21 Department of Health and Human Resources to pay for professional
22 services rendered by a psychologist, psychiatrist, physician,
23 therapist or other health care professional to a child or other

1 party to the proceedings. Professional services include, but are
2 not limited to, treatment, therapy, counseling, evaluation, report
3 preparation, consultation and preparation of expert testimony. The
4 West Virginia Department of Health and Human Resources shall set
5 the fee schedule for such services in accordance with the Medicaid
6 rate, if any, or the customary rate and adjust the schedule as
7 appropriate. Every such psychologist, psychiatrist, physician,
8 therapist or other health care professional shall be paid by the
9 West Virginia Department of Health and Human Resources upon
10 completion of services and submission of a final report or other
11 information and documentation as required by the policies and
12 procedures implemented by the West Virginia Department of Health
13 and Human Resources.

14 **§49-20-115. Commission to Study Residential Placement of Children.**

15 (a) The Legislature finds that the state's current system of
16 servicing children and families in need of or at risk of needing
17 social, emotional and behavioral health services is fragmented.
18 The existing categorical structure of government programs and their
19 funding streams discourages collaboration, resulting in duplication
20 of efforts and a waste of limited resources. Children are usually
21 involved in multiple child-serving systems, including child
22 welfare, juvenile justice and special education. More than ten
23 percent of children presently in care are presently in out-of-state

1 placements. Earlier efforts at reform have focused on quick fixes
2 for individual components of the system at the expense of the
3 whole. It is the purpose of this section to establish a mechanism
4 to achieve systemic reform by which all of the state's
5 child-serving agencies involved in the residential placement of
6 at-risk youth jointly and continually study and improve upon this
7 system and make recommendations to their respective agencies and to
8 the Legislature regarding funding and statutory, regulatory and
9 policy changes. It is further the Legislature's intent to build
10 upon these recommendations to establish an integrated system of
11 care for at-risk youth and families that makes prudent and
12 cost-effective use of limited state resources by drawing upon the
13 experience of successful models and best practices in this and
14 other jurisdictions, which focuses on delivering services in the
15 least restrictive setting appropriate to the needs of the child,
16 and which produces better outcomes for children, families and the
17 state.

18 (b) There is created within the Department of Health and Human
19 Resources the Commission to Study the Residential Placement of
20 Children. The commission consists of the Secretary of the
21 Department of Health and Human Resources, the Commissioner of the
22 Bureau for Children and Families, the Commissioner for the Bureau
23 for Behavioral Health and Health Facilities, the Commissioner for

1 the Bureau for Medical Services, the State Superintendent of
2 Schools, a representative of local educational agencies, the
3 Director of the Office of Institutional Educational Programs, the
4 Director of the Office of Special Education Programs and Assurance,
5 the Director of the Division of Juvenile Services and the Executive
6 Director of the Prosecuting Attorney's Institute. At the
7 discretion of the West Virginia Supreme Court of Appeals, circuit
8 and family court judges and other court personnel, including the
9 Administrator of the Supreme Court of Appeals and the Director of
10 the Juvenile Probation Services Division, may serve on the
11 commission. These statutory members may further designate
12 additional persons in their respective offices who may attend the
13 meetings of the commission if they are the administrative head of
14 the office or division whose functions necessitate their inclusion
15 in this process. In its deliberations, the commission shall also
16 consult and solicit input from families and service providers.

17 (c) The Secretary of the Department of Health and Human
18 Resources shall serve as chair of the commission, which shall meet
19 on a quarterly basis at the call of the chair.

20 (d) At a minimum, the commission shall study:

21 (1) The current practices of placing children out-of-home and
22 into in-residential placements, with special emphasis on
23 out-of-state placements;

1 (2) The adequacy, capacity, availability and utilization of
2 existing in-state facilities to serve the needs of children
3 requiring residential placements;

4 (3) Strategies and methods to reduce the number of children
5 who must be placed in out-of-state facilities and to return
6 children from existing out-of-state placements, initially targeting
7 older youth who have been adjudicated delinquent;

8 (4) Staffing, facilitation and oversight of multidisciplinary
9 treatment planning teams;

10 (5) The availability of and investment in community-based,
11 less restrictive and less costly alternatives to residential
12 placements;

13 (6) Ways in which up-to-date information about in-state
14 placement availability may be made readily accessible to state
15 agency and court personnel, including an interactive secure web
16 site;

17 (7) Strategies and methods to promote and sustain cooperation
18 and collaboration between the courts, state and local agencies,
19 families and service providers, including the use of inter-agency
20 memoranda of understanding, pooled funding arrangements and sharing
21 of information and staff resources;

22 (8) The advisability of including "no-refusal" clauses in
23 contracts with in-state providers for placement of children whose

1 treatment needs match the level of licensure held by the provider;

2 (9) Identification of in-state service gaps and the
3 feasibility of developing services to fill those gaps, including
4 funding;

5 (10) Identification of fiscal, statutory and regulatory
6 barriers to developing needed services in-state in a timely and
7 responsive way;

8 (11) Ways to promote and protect the rights and participation
9 of parents, foster parents and children involved in out-of-home
10 care;

11 (12) Ways to certify out-of-state providers to ensure that
12 children who must be placed out-of-state receive high quality
13 services consistent with this state's standards of licensure and
14 rules of operation; and

15 (13) Any other ancillary issue relative to foster care
16 placement.

17 (e) The commission shall report annually to the Legislative
18 Oversight Commission on Health and Human Resources Accountability
19 its conclusions and recommendations, including an implementation
20 plan whereby:

21 (1) Out-of-state placements shall be reduced by at least ten
22 percent per year and by at least fifty percent within three years;

23 (2) Child-serving agencies shall develop joint operating and

1 funding proposals to serve the needs of children and families that
2 cross their jurisdictional boundaries in a more seamless way;

3 (3) Steps shall be taken to obtain all necessary federal plan
4 waivers or amendments in order for agencies to work collaboratively
5 while maximizing the availability of federal funds;

6 (4) Agencies shall enter into memoranda of understanding to
7 assume joint responsibilities;

8 (5) System of care components and cooperative relationships
9 shall be incrementally established at the local, state and regional
10 levels, with links to existing resources, such as family resource
11 networks and regional summits, wherever possible; and

12 (6) Recommendations for changes in fiscal, statutory and
13 regulatory provisions are included for legislative action.

14 (f) The Commission shall terminate on December 31, 2015,
15 unless continued by act of the Legislature.

NOTE: The purpose of this bill is to revise, rearrange, consolidating and recodify the laws of the State of West Virginia relating to child welfare.

Chapter 49 of the Code of West Virginia has been completely rewritten; therefore, it has been completely underscored.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Legislative Oversight Commission on Health and Human Resources Accountability.