

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 253**

4 (By Senators Trump, Blair, D. Hall, Stollings, Laird, Kirkendoll, Snyder, Plymale and Leonhardt)

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6 [Originating in the Committee on Health and Human Resources;

7 reported January 28, 2015.]  
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11 A BILL to amend and reenact §49-1-101, §49-1-102, §49-1-103, §49-1-104, §49-1-105, §49-1-106,  
12 §49-1-201, §49-1-202, §49-1-203, §49-1-204, §49-1-205, §49-1-206, §49-1-207, §49-1-208  
13 and §49-1-209; §49-2-101, §49-2-102, §49-2-103, §49-2-104, §49-2-105, §49-2-106, §49-2-  
14 107, §49-2-108, §49-2-109, §49-2-110, §49-2-111, §49-2-112, §49-2-113, §49-2-114, §49-  
15 2-115, §49-2-116, §49-2-117, §49-2-118, §49-2-119, §49-2-120, §49-2-121, §49-2-122, §49-  
16 2-123, §49-2-124, §49-2-125, §49-2-201, §49-2-202, §49-2-203, §49-2-204, §49-2-205, §49-  
17 2-206, §49-2-207, §49-2-301, §49-2-302, §49-2-303, §49-2-304, §49-2-401, §49-2-501, §49-  
18 2-502, §49-2-503, §49-2-504, §49-2-505, §49-2-601, §49-2-602, §49-2-603, §49-2-604,  
19 §49-2-605, §49-2-701, §49-2-702, §49-2-703, §49-2-704, §49-2-705, §49-2-706, §49-2-707,  
20 §49-2-708, §49-2-801, §49-2-802, §49-2-803, §49-2-804, §49-2-805, §49-2-806, §49-2-807,  
21 §49-2-808, §49-2-809, §49-2-810, §49-2-811, §49-2-812, §49-2-813, §49-2-901, §49-2-902,  
22 §49-2-903, §49-2-904, §49-2-905, §49-2-906, §49-2-907, §49-2-908, §49-2-909, §49-2-910,

1 §49-2-911, §49-2-1001, §49-2-1002, §49-2-1003, §49-2-1004, §49-2-1005 and §49-2-1006;  
2 §49-3-101 and §49-3-102; §49-4-101, §49-4-102, §49-4-103, §49-4-104, §49-4-105, §49-4-  
3 106, §49-4-107, §49-4-108, §49-4-109, §49-4-110, §49-4-111, §49-4-112, §49-4-113, §49-4-  
4 114, §49-4-115, §49-4-116, §49-4-201, §49-4-202, §49-4-203, §49-4-204, §49-4-205, §49-4-  
5 301, §49-4-302, §49-4-303, §49-4-401, §49-4-402, §49-4-403, §49-4-404, §49-4-405, §49-4-  
6 406, §49-4-407, §49-4-408, §49-4-409, §49-4-410, §49-4-411, §49-4-412, §49-4-501, §49-4-  
7 502, §49-4-503, §49-4-504, §49-4-601, §49-4-602, §49-4-603, §49-4-604, §49-4-605, §49-4-  
8 606, §49-4-607, §49-4-608, §49-4-609, §49-4-610, §49-4-701, §49-4-702, §49-4-703, §49-4-  
9 704, §49-4-705, §49-4-706, §49-4-707, §49-4-708, §49-4-709, §49-4-710, §49-4-711, §49-4-  
10 712, §49-4-713, §49-4-714, §49-4-715, §49-4-716, §49-4-717, §49-4-718, §49-4-719, §49-4-  
11 720, §49-4-721, §49-4-722, §49-4-723, §49-4-801, §49-4-802, §49-4-803, §49-4-901, §49-  
12 4-902, §49-4-903 and §49-4-904; §49-5-101, §49-5-102, §49-5-103, §49-5-104 and §49-5-  
13 105; §49-6-101, §49-6-102, §49-6-103, §49-6-104, §49-6-105, §49-6-106, §49-6-107, §49-6-  
14 108, §49-6-109, §49-6-110, §49-6-111, §49-6-112, §49-6-113, §49-6-114 and §49-6-115;  
15 §49-7-101, §49-7-102, §49-7-201, §49-7-202, §49-7-203, §49-7-204, §49-7-301, §49-7-302,  
16 §49-7-303 and §49-7-304 of the Code of West Virginia, 1931, as amended, all relating to  
17 revising, rearranging, consolidating and recodifying the laws of the State of West Virginia  
18 relating to child welfare; and removing outdated language to comply with court rulings  
19 concerning child welfare.

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

21 That §49-1-101, §49-1-102, §49-1-103, §49-1-104, §49-1-105, §49-1-106, §49-1-201, §49-1-  
22 202, §49-1-203, §49-1-204, §49-1-205, §49-1-206, §49-1-207, §49-1-208 and §49-1-209; §49-2-101,

1 §49-2-102, §49-2-103, §49-2-104, §49-2-105, §49-2-106, §49-2-107, §49-2-108, §49-2-109, §49-2-  
2 110, §49-2-111, §49-2-112, §49-2-113, §49-2-114, §49-2-115, §49-2-116, §49-2-117, §49-2-118,  
3 §49-2-119, §49-2-120, §49-2-121, §49-2-122, §49-2-123, §49-2-124, §49-2-125, §49-2-201, §49-2-  
4 202, §49-2-203, §49-2-204, §49-2-205, §49-2-206, §49-2-207, §49-2-301, §49-2-302, §49-2-303,  
5 §49-2-304, §49-2-401, §49-2-501, §49-2-502, §49-2-503, §49-2-504, §49-2-505, §49-2-601, §49-2-  
6 602, §49-2-603, §49-2-604, §49-2-605, §49-2-701, §49-2-702, §49-2-703, §49-2-704, §49-2-705,  
7 §49-2-706, §49-2-707, §49-2-708, §49-2-801, §49-2-802, §49-2-803, §49-2-804, §49-2-805, §49-2-  
8 806, §49-2-807, §49-2-808, §49-2-809, §49-2-810, §49-2-811, §49-2-812, §49-2-813, §49-2-901,  
9 §49-2-902, §49-2-903, §49-2-904, §49-2-905, §49-2-906, §49-2-907, §49-2-908, §49-2-909, §49-2-  
10 910, §49-2-911, §49-2-1001, §49-2-1002, §49-2-1003, §49-2-1004, §49-2-1005 and §49-2-1006;  
11 §49-3-101 and §49-3-102; §49-4-101, §49-4-102, §49-4-103, §49-4-104, §49-4-105, §49-4-106,  
12 §49-4-107, §49-4-108, §49-4-109, §49-4-110, §49-4-111, §49-4-112, §49-4-113, §49-4-114, §49-4-  
13 115, §49-4-116, §49-4-201, §49-4-202, §49-4-203, §49-4-204, §49-4-205, §49-4-301, §49-4-302,  
14 §49-4-303, §49-4-401, §49-4-402, §49-4-403, §49-4-404, §49-4-405, §49-4-406, §49-4-407, §49-4-  
15 408, §49-4-409, §49-4-410, §49-4-411, §49-4-412, §49-4-501, §49-4-502, §49-4-503, §49-4-504,  
16 §49-4-601, §49-4-602, §49-4-603, §49-4-604, §49-4-605, §49-4-606, §49-4-607, §49-4-608, §49-4-  
17 609, §49-4-610, §49-4-701, §49-4-702, §49-4-703, §49-4-704, §49-4-705, §49-4-706, §49-4-707,  
18 §49-4-708, §49-4-709, §49-4-710, §49-4-711, §49-4-712, §49-4-713, §49-4-714, §49-4-715, §49-4-  
19 716, §49-4-717, §49-4-718, §49-4-719, §49-4-720, §49-4-721, §49-4-722, §49-4-723, §49-4-801,  
20 §49-4-802, §49-4-803, §49-4-901, §49-4-902, §49-4-903 and §49-4-904; §49-5-101, §49-5-102,  
21 §49-5-103, §49-5-104 and §49-5-105; §49-6-101, §49-6-102, §49-6-103, §49-6-104, §49-6-105,  
22 §49-6-106, §49-6-107, §49-6-108, §49-6-109, §49-6-110, §49-6-111, §49-6-112, §49-6-113, §49-6-

1 114 and §49-6-115; §49-7-101, §49-7-102, §49-7-201, §49-7-202, §49-7-203, §49-7-204, §49-7-  
2 301, §49-7-302, §49-7-303 and §49-7-304 of the Code of West Virginia, 1931, as amended, be  
3 amended and reenacted, all to read as follows:

4 **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

5 **PART I. GENERAL PROVISIONS AND PURPOSE.**

6 **§49-1-101. Short title; intent of recodification.**

7 (a) This chapter shall be known and may be cited as the “West Virginia Child Welfare Act.”

8 (b) The recodification of this chapter during the regular session of the Legislature in the year  
9 2015 is intended to embrace in a revised, consolidated, and codified form and arrangement the laws  
10 of the State of West Virginia relating to child welfare at the time of that enactment.

11 **§49-1-102. Legislative intent; continuation of existing statutory provisions.**

12 In recodifying the child welfare law of this state during the regular session of the Legislature  
13 in the year 2015 it is intended by the Legislature that each specific reenactment of a substantively  
14 similar prior statutory provision will be construed as continuing the intended meaning of the  
15 corresponding prior statutory provision and any existing judicial interpretation of the prior statutory  
16 provision. It is not the intent of the Legislature, by recodifying the child welfare law of this state  
17 during the regular session of the Legislature in the year 2015 to alter the substantive law of this state  
18 as it relates to child welfare.

19 **§49-1-103. Operative date of enactment; effect on existing law.**

20 The amendment and reenactment of chapter forty-nine of this code, as enacted by the  
21 Legislature during the regular session, 2015, are operative on September 1, 2015. The prior  
22 enactments of chapter forty-nine of this code, whether amended and reenacted or repealed by the

1 action of the Legislature during the 2015 regular session, have full force and effect until that time.

2 **§49-1-104. West Virginia code replacement.**

3 The Department of Health and Human Resources and the Department of Military Affairs and  
4 Public Safety are not required to change any form or letter that contains a citation to this code that  
5 is changed or otherwise affected by the recodification of this chapter during the 2015 regular session  
6 of the Legislature unless specifically required by a provision of this code.

7 **§49-1-105. Purpose.**

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

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

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

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

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

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

16 (5) Develop and establish procedures and programs which are family-focused rather than  
17 focused on specific family members, except where the best interests of the child or the safety of the  
18 community are at risk;

19 (6) Involve the child, the child's family or the child's caregiver in the planning and delivery  
20 of programs and services;

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

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

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

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

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

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

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

13 (d) Through licensure, approval, and registration of child care, the state exercises its  
14 benevolent police power to protect the user of a service from risks against which he or she would  
15 have little or no competence for self protection. Licensure, approval, and registration processes  
16 shall, therefore, continually balance the child's rights and need for protection with the interests, rights  
17 and responsibility of the service providers.

18 **§49-1-106. Location of child welfare services; state and federal cooperation; juvenile services.**

19 (a) The child welfare service of the state shall be located within and administered by the  
20 Department of Health and Human Resources. The Division of Juvenile Services of the Department  
21 of Military Affairs and Public Safety shall administer the secure predispositional juvenile detention  
22 and juvenile correctional facilities of the state. Notwithstanding any other provision of this code to

1 the contrary, the administrative authority of the Division of Juvenile Services over any child or  
2 juvenile in this state extends only to those detained or committed to a secure detention facility or  
3 secure correctional facility operated and maintained by the division by an order of a court of  
4 competent jurisdiction during the period of actual detention or confinement in the facility.

5 (b) The Department of Health and Human Resources is designated as the state entity to  
6 cooperate with the United States Department of Health and Human Services and United States  
7 Department of Justice in extending and improving child welfare services, to comply with federal  
8 regulations, and to receive and expend federal funds for these services. The Division of Juvenile  
9 Services of the Department of Military Affairs and Public Safety is designated as the state entity to  
10 cooperate with the United States Department of Health and Human Services and United States  
11 Department of Justice in operating, maintaining and improving juvenile correction facilities and  
12 centers for the predispositional detention of children, to comply with federal regulations, and to  
13 receive and expend federal funds for these services.

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

17 PART II. DEFINITIONS.

18 **§49-1-201. Definitions related, but not limited, to child abuse and neglect.**

19 When used in this chapter, terms defined in this section have the meanings ascribed to them  
20 that relate to, but are not limited to, child abuse and neglect, except in those instances where a  
21 different meaning is provided or the context in which the word is used clearly indicates that a  
22 different meaning is intended.

1           “Abandonment” means any conduct that demonstrates the settled purpose to forego the duties  
2 and parental responsibilities to the child;

3           "Abused child" means a child whose health or welfare is being harmed or threatened by:

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

8           (B) Sexual abuse or sexual exploitation;

9           (C) The sale or attempted sale of a child by a parent, guardian or custodian in violation of  
10 section fourteen-h, article two, chapter sixty-one of this code; or

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

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

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

22          "Child abuse and neglect services" means social services which are directed toward:



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

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

3 (C) Preventing the unnecessary removal of children from their families by identifying family  
4 problems and assisting families in resolving problems which could lead to a removal of children and  
5 a breakup of the family;

6 (D) In cases where children have been removed from their families, providing time-limited  
7 reunification services to the children and the families so as to reunify those children with their  
8 families or some portion thereof;

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

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

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

17 "Imminent danger to the physical well-being of the child" means an emergency situation in  
18 which the welfare or the life of the child is threatened. These conditions may include an emergency  
19 situation when there is reasonable cause to believe that any child in the home is or has been sexually  
20 abused or sexually exploited, or reasonable cause to believe that the following conditions threaten  
21 the health, life, or safety of any child in the home:

22 (A) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter

1 or other caretaker;

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

4 (C) Nutritional deprivation;

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

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

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

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

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

13 (I) Any other condition that threatens the health, life, or safety of any child in the home.

14 "Neglected child" means a child:

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

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

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

1 "Petitioner or co-petitioner" means the Department or any reputable person who files a child  
2 abuse or neglect petition pursuant to section six hundred one, article four, of this chapter.

3 "Permanency plan" means the part of the case plan which is designed to achieve a permanent  
4 home for the child in the least restrictive setting available.

5 "Respondent" means all parents, guardians, and custodians identified in the child abuse and  
6 neglect petition who are not petitioners or co-petitioners.

7 "Sexual abuse" means:

8 (A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by section  
9 three, article eight-c, chapter sixty-one, which a parent, guardian or custodian engages in, attempts  
10 to engage in, or knowingly procures another person to engage in with a child notwithstanding the fact  
11 that for a child who is less than sixteen years of age the child may have willingly participated in that  
12 conduct or the child may have suffered no apparent physical injury or mental or emotional injury as  
13 a result of that conduct or, for a child sixteen years of age or older the child may have consented to  
14 that conduct or the child may have suffered no apparent physical injury or mental or emotional injury  
15 as a result of that conduct; or

16 (B) Any conduct where a parent, guardian or custodian displays his or her sex organs to a  
17 child, or procures another person to display his or her sex organs to a child, for the purpose of  
18 gratifying the sexual desire of the parent, guardian or custodian, of the person making that display,  
19 or of the child, or for the purpose of affronting or alarming the child.

20 "Sexual contact" means sexual contact as that term is defined in section one, article eight-b,  
21 chapter sixty-one of this code.

22 "Sexual exploitation" means an act where:

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

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

8 "Sexual intercourse" means sexual intercourse as that term is defined in section one, article  
9 eight-b, chapter sixty-one of this code.

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

12 "Serious physical abuse" means bodily injury which creates a substantial risk of death, which  
13 causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or  
14 impairment of the function of any bodily organ.

15 **§49-1-202. Definitions related, but not limited, to adult, child, developmental disability, and**  
16 **transitioning adult status.**

17 When used in this chapter, terms defined in this section have the meanings ascribed to them  
18 that relate to, but are not limited to, adult, child, developmental disability, and transitioning adult  
19 status, except in those instances where a different meaning is provided or the context in which the  
20 word is used clearly indicates that a different meaning is intended.

21 "Adult" means a person who is at least eighteen years of age.

22 "Child" or "Juvenile" means any person under eighteen years of age or is a transitioning adult.

1 Once a child or juvenile is transferred to a court with criminal jurisdiction pursuant to section seven  
2 hundred ten, article four of this chapter, he or she shall remain a child or juvenile for the purposes  
3 of the applicability of this chapter. Unless otherwise stated, for the purpose of child care services  
4 "child" means an individual who meets one of the following conditions:

5 (A) Is under thirteen years of age;

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

7 (C) Is thirteen to eighteen years of age and presenting a significant delay of at least  
8 twenty-five percent in one or more areas of development, or a six month delay in two or more areas  
9 as determined by an early intervention program, special education program or other multidisciplinary  
10 team.

11 "Juvenile delinquent" means a juvenile who has been adjudicated as one who commits an act  
12 which would be a crime under state law or a municipal ordinance if committed by an adult.

13 "Status offender" means a juvenile who has been adjudicated as one:

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

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

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

20 "Transitioning adult" means an individual with a transfer plan to move to an adult setting  
21 who meets one of the following conditions:

22 (A) Is eighteen years of age but under twenty-one years of age, was in the custody of the

1 Department of Health and Human Resources upon reaching eighteen years of age and committed an  
2 act of delinquency before reaching eighteen years of age, remains under the jurisdiction of the  
3 juvenile court, and requires supervision and care to complete an education and or treatment program  
4 which was initiated prior to the eighteenth birthday; or

5 (B) Is eighteen years of age but under twenty-one years of age, was adjudicated abused,  
6 neglected, or in the custody of the Department of Health and Human Resources upon reaching  
7 eighteen years of age and enters into a contract with the Department of Health and Human Resources  
8 to continue in an educational, training, or treatment program which was initiated prior to the  
9 eighteenth birthday.

10 **§49-1-203. Definitions related, but not limited, to licensing and approval of programs.**

11 When used in this chapter, terms defined in this section have the meanings ascribed to them  
12 that relate to, but are not limited to, licensing and approval of programs, except in those instances  
13 where a different meaning is provided or the context in which the word is used clearly indicates that  
14 a different meaning is intended.

15 "Approval" means a finding by the Secretary of the Department of Health and Human  
16 Resources that a facility operated by the state has met the requirements of legislative rules  
17 promulgated for operation of that facility and that a Certificate of Approval or a Certificate of  
18 Operation has been issued.

19 "Certification of Approval" or "Certificate of Operation" means a statement issued by the  
20 Secretary of the Department of Health and Human Resources that a facility meets all of the necessary  
21 requirements for operation.

22 "Certificate of license" means a statement issued by the Secretary of the Department of

1 Health and Human Resources authorizing an individual, corporation, partnership, voluntary  
2 association, municipality or county, or any agency thereof, to provide specified services for a limited  
3 period of time in accordance with the terms of the certificate.

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

8 "License" means the grant of official permission to a facility to engage in an activity which  
9 would otherwise be prohibited.

10 "Registration" means the process by which a family child care home, informal family child  
11 care home or a relative family child care home self-certifies compliance with the legislative rules  
12 promulgated pursuant to this chapter.

13 "Rule" means legislative rules promulgated by the Secretary of the Department of Health and  
14 Human Resources or a statement issued by the Secretary of the Department of Health and Human  
15 Resources of the standards to be applied in the various areas of child care.

16 "Variance" means a declaration that a rule may be accomplished in a manner different from  
17 the manner set forth in the rule.

18 "Waiver" means a declaration that a certain legislative rule is inapplicable in a particular  
19 circumstance.

20 **§49-1-204. Definitions related, but not limited, to custodians, legal guardians and family.**

21 When used in this chapter, terms defined in this section have the meanings ascribed to them  
22 that relate to, but are not limited to, custodians, legal guardians and family, except in those instances

1 where a different meaning is provided or the context in which the word is used clearly indicates that  
2 a different meaning is intended.

3 "Caregiver" means any person who is at least eighteen years of age and:

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

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

8 "Custodian" means a person who has or shares actual physical possession or care and custody  
9 of a child, regardless of whether that person has been granted custody of the child by any contract  
10 or agreement.

11 "Dysfunctional family," for the purposes of part two, article two of this chapter, means a  
12 parent or parents or an adult or adults and a child or children living together and functioning in an  
13 impaired or abnormal manner so as to cause substantial physical or emotional danger, injury or harm  
14 to one or more children thereof regardless of whether those children are natural offspring, adopted  
15 children, step children or unrelated children to that parents.

16 "Legal or minor guardianship" means the permanent relationship between a child and a  
17 caretaker, established by order of the court having jurisdiction over the child or juvenile, pursuant  
18 to this chapter and chapter forty-four of this code.

19 "Parent" means an individual defined as a parent by law or on the basis of a biological  
20 relationship, marriage to a person with a biological relationship, legal adoption or other recognized  
21 grounds.

22 "Parental rights" means any and all rights and duties regarding a parent to a minor child.



1 "Parenting skills" means a parent's competency in providing physical care, protection,  
2 supervision and psychological support appropriate to a child's age and state of development.

3 "Siblings" means children who have at least one biological parent in common or who have  
4 been legally adopted by the same parent or parents.

5 **§49-1-205. Definitions related, but not limited, to developmental disabilities.**

6 When used in this chapter, terms defined in this section have the meanings ascribed to them  
7 that relate to, but are not limited to, developmental disabilities, except in those instances where a  
8 different meaning is provided or the context in which the word is used clearly indicates that a  
9 different meaning is intended.

10 "Developmental disability" means a severe, chronic disability of a person which:

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

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

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

16 (I) Self-care;

17 (ii) Receptive and expressive language;

18 (iii) Learning;

19 (iv) Mobility;

20 (v) Self-direction;

21 (vi) Capacity for independent living; and

22 (vii) Economic self-sufficiency; and

1 (D) Reflects the person's need for services and supports which are of lifelong or extended  
2 duration and are individually planned and coordinated.

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

7 "Family or primary caregiver," for the purposes of part six, article two of this chapter, means  
8 the person or persons with whom the developmentally disabled person resides and who is primarily  
9 responsible for the physical care, education, health and nurturing of the disabled person pursuant to  
10 the provisions of part six, article two of this chapter. The term does not include hospitals, nursing  
11 homes, personal care homes or any other similar institution.

12 "Legal guardian," for the purposes of part six of article two of this chapter, means the person  
13 who is appointed legal guardian of a developmentally disabled person and who is responsible for the  
14 physical and financial aspects of caring for that person, regardless of whether the disabled person  
15 resides with his or her legal guardian or another family member.

16 **§49-1-206. Definitions related, but not limited, to child advocacy, care, residential, and**  
17 **treatment programs.**

18 When used in this chapter, terms defined in this section have the meanings ascribed to them  
19 that relate to, but are not limited to, child advocacy, care, residential and treatment programs, except  
20 in those instances where a different meaning is provided or the context in which the word is used  
21 clearly indicates that a different meaning is intended.

22 "Child advocacy center (CAC)" means a community-based organization that is a member in

1 good standing with the West Virginia Child Abuse Network, Inc., as set forth in section one hundred  
2 one, article three of this chapter.

3 "Child care" means responsibilities assumed and services performed in relation to a child's  
4 physical, emotional, psychological, social and personal needs and the consideration of the child's  
5 rights and entitlements, but does not include secure detention or incarceration under the jurisdiction  
6 of the Division of Juvenile Services pursuant to part nine, article two of this chapter. It includes the  
7 provision of child care services or residential services.

8 "Child care center" means a facility maintained by the state or any county or municipality  
9 thereof, or any agency or facility maintained by an individual, firm, corporation, association or  
10 organization, public or private for the care of thirteen or more children for child care services in any  
11 setting, if the facility is open for more than thirty days per year per child.

12 "Child care services" means direct care and protection of children during a portion of a  
13 twenty-four hour day outside of the child's own home which provides experiences to children that  
14 foster their healthy development and education.

15 "Child placing agency" means a child welfare agency organized for the purpose of placing  
16 children in private family homes for foster care or for adoption. The function of a child-placing  
17 agency may include the investigation and certification of foster family homes and foster family group  
18 homes as provided in this chapter. The function of a child placing agency may also include the  
19 supervision of children who are sixteen or seventeen years old and living in unlicensed residences.

20 "Child welfare agency" means any agency or facility maintained by the state or any county  
21 or municipality thereof, or any agency or facility maintained by an individual, firm, corporation,  
22 association or organization, public or private, to receive children for care and maintenance or for

1 placement in residential care facilities, including, without limitation, private homes, or any facility  
2 that provides care for unmarried mothers and their children. A child welfare agency does not include  
3 juvenile detention facilities or juvenile correctional facilities operated by or under contract with the  
4 Division of Juvenile Services, pursuant to part nine, article two of this chapter, nor any other facility  
5 operated by that division for the secure housing or holding of juveniles committed to its custody.

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

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

17 "Family child care facility" means any facility which is used to provide nonresidential child  
18 care services for compensation for seven to twelve children, including children who are living in the  
19 household, who are under six years of age. No more than four of the total number of children may  
20 be under twenty-four months of age. A facility may be in a provider's residence or a separate  
21 building.

22 "Family child care home" means a facility which is used to provide nonresidential child care

1 services for compensation in a provider's residence. The provider may care for four to six children,  
2 at one time including children who are living in the household, who are under six years of age. No  
3 more than two of the total number of children may be under twenty-four months of age.

4 "Family resource network" means:

5 (A) A local community organization charged with service coordination, needs and resource  
6 assessment, planning, community mobilization and evaluation, and which has met the following  
7 criteria:

8 (i) Agreeing to a single governing entity;

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

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

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

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

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

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

21 "Family support," for the purposes of part six, article two of this chapter, means goods and  
22 services needed by families to care for their family members with developmental disabilities and to

1 enjoy a quality of life comparable to other community members.

2 "Family support program" means a coordinated system of family support services  
3 administered by the Department of Health and Human Resources through contracts with behavioral  
4 health agencies throughout the state.

5 "Foster family home" means a private residence which is used for the care on a residential  
6 basis of no more than five children who are unrelated by blood, marriage or adoption to any adult  
7 member of the household.

8 "Health care and treatment" means:

9 (A) Developmental screening;

10 (B) Mental health screening;

11 (C) Mental health treatment;

12 (D) Ordinary and necessary medical and dental examination and treatment;

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

14 and

15 (F) Nonemergency diagnosis and treatment. However, nonemergency diagnosis and treatment  
16 does not include an abortion.

17 "Home-based family preservation services" means services dispensed by the Department of  
18 Human Resources or by another person, association or group who has contracted with that division  
19 to dispense services when those services are intended to stabilize and maintain the natural or  
20 surrogate family in order to prevent the placement of children in substitute care. There are two types  
21 of home-based family preservation services and they are as follows:

22 (A) Intensive, short term intervention of four to six weeks; and

1 (B) Home-based, longer term after care following intensive intervention.

2 "Informal family child care" means a home that is used to provide nonresidential child care  
3 services for compensation for three or fewer children, including children who are living in the  
4 household, who are under six years of age. Care is given in the provider's own home to at least one  
5 child who is not related to the caregiver.

6 "Nonsecure facility" means any public or private residential facility not characterized by  
7 construction fixtures designed to physically restrict the movements and activities of individuals held  
8 in lawful custody in that facility and which provides its residents access to the surrounding  
9 community with supervision.

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

13 "Placement" means any temporary or permanent placement of a child who is in the custody  
14 of the state in any foster home, group home or other facility or residence.

15 "Pre- adjudicatory community supervision" means supervision provided to a youth prior to  
16 adjudication, a period of supervision up to one year for an alleged status or delinquency offense.

17 "Regional family support council" means the council established by the regional family  
18 support agency to carry out the responsibilities specified in part six, article two of this chapter.

19 "Relative family child care" means a home that provides nonresidential child care services  
20 only to children related to the caregiver. The caregiver is a grandparent, great grandparent, aunt,  
21 uncle, great-aunt, great-uncle or adult sibling of the child or children receiving care. Care is given  
22 in the provider's home.

1 "Residential services" means child care which includes the provision of nighttime shelter and  
2 the personal discipline and supervision of a child by guardians, custodians or other persons or entities  
3 on a continuing or temporary basis. It may include care and or treatment for transitioning adults.  
4 Residential Services does not include or apply to any juvenile detention facility or juvenile  
5 correctional facility operated by the Division of Juvenile Services, created pursuant to this chapter,  
6 for the secure housing or holding of juveniles committed to its custody.

7 "Secure facility" means any public or private residential facility which includes construction  
8 fixtures designed to physically restrict the movements and activities of children or other individuals  
9 held in lawful custody in that facility.

10 "Staff-secure facility" means any public or private residential facility characterized by staff  
11 restrictions of the movements and activities of individuals held in lawful custody in that facility and  
12 which limits its residents' access to the surrounding community, but is not characterized by  
13 construction fixtures designed to physically restrict the movements and activities of residents.

14 "State family support council" means the council established by the Department of Health  
15 and Human Resources pursuant to part six, article two of this chapter to carry out the responsibilities  
16 specified in article two of this chapter.

17 "Time-limited reunification services" means individual, group and family counseling,  
18 inpatient, residential or outpatient substance abuse treatment services, mental health services,  
19 assistance to address domestic violence, services designed to provide temporary child care and  
20 therapeutic services for families, including crisis nurseries and transportation to or from those  
21 services, provided during fifteen of the most recent twenty-two months a child or juvenile has been  
22 in foster care, as determined by the earlier date of the first judicial finding that the child is subjected



1 to abuse or neglect, or the date which is sixty days after the child or juvenile is removed from home.

2 **§49-1-207. Definitions related to court actions.**

3           When used in this chapter, terms defined in this section have the meanings ascribed to them  
4 that relate to, but are not limited to, court actions, except in those instances where a different  
5 meaning is provided or the context in which the word is used clearly indicates that a different  
6 meaning is intended.

7           "Court" means the circuit court of the county with jurisdiction of the case or the judge in  
8 vacation unless otherwise specifically provided.

9           "Court appointed special advocate (CASA) program" means a community organization that  
10 screens, trains and supervises CASA volunteers to advocate for the best interests of children who  
11 are involved in abuse and neglect proceedings section one hundred two, article three of this chapter.

12           "Extrajudicial Statement" means any utterance, written or oral, which was made outside of  
13 court.

14           "Multidisciplinary team" means a group of professionals and paraprofessionals representing  
15 a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat  
16 specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited  
17 to, medical, educational, child care and law-enforcement personnel, social workers, psychologists  
18 and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses  
19 and to provide comprehensive coordinated treatment with continuity and follow-up for both parents  
20 and children.

21           "Community team" means a multidisciplinary group which addresses the general problem  
22 of child abuse and neglect in a given community and may consist of several multidisciplinary teams

1 with different functions.

2 "Res gestae" means a spontaneous declaration made by a person immediately after an event  
3 and before the person has had an opportunity to conjure a falsehood.

4 "Valid court order" means an order issued by a court of competent jurisdiction relating to a  
5 child brought before the court and who is the subject of that order. Prior to the entry of the order the  
6 child shall have received the full due process rights guaranteed to that child or juvenile by the  
7 Constitutions of the United States and the State of West Virginia.

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

13 **§49-1-208. Definitions related, but not limited, to state and local agencies.**

14 When used in this chapter, terms defined in this section have the meanings ascribed to them  
15 that relate to, but are not limited to, state and local agencies, except in those instances where a  
16 different meaning is provided or the context in which the word is used clearly indicates that a  
17 different meaning is intended.

18 "Department" or "state department" means the West Virginia Department of Health and  
19 Human Resources.

20 "Division of Juvenile Services" means the division within the West Virginia Department of  
21 Military Affairs and Public Safety.

22 "Law-enforcement officer" means a law-enforcement officer of the Department of Public

1 Safety, a municipality or county sheriff's department.

2 "Secretary" means the Secretary of the West Virginia Department of Health and Human  
3 Resources.

4 **§49-1-209. Definitions related, but not limited, to missing children.**

5 As used in article six of this chapter:

6 "Child" means an individual under the age of eighteen years who is not emancipated;

7 "Clearinghouse" means the West Virginia missing children information clearinghouse;

8 "Custodian" means a parent, guardian, custodian or other person who exercises legal physical  
9 control, care or custody of a child;

10 "Missing child" means a child whose whereabouts are unknown to the child's custodian and  
11 the circumstances of whose absence indicate that:

12 (A) The child did not leave the care and control of the custodian voluntarily and the taking  
13 of the child was not authorized by law; or

14 (B) The child voluntarily left the care and control of his or her custodian without the  
15 custodian's consent and without intent to return;

16 "Missing child report" means information that is:

17 (A) Given to a law-enforcement agency on a form used for sending information to the  
18 national crime information center; and

19 (B) About a child whose whereabouts are unknown to the reporter and who is alleged in the  
20 form submitted by the reporter to be missing;

21 "Possible match" means the similarities between an unidentified body of a child and a  
22 missing child that would lead one to believe they are the same child;

1 "Reporter" means the person who reports a missing child; and

2 "State agency" means an agency of the state, political subdivision of the state or public post-  
3 secondary educational institution.

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

5 **PART I. GENERAL AUTHORITY AND DUTIES OF**

6 **THE DEPARTMENT OF HEALTH AND HUMAN RESOURCES.**

7 **§49-2-101. Authorization and responsibility.**

8 (a) The Department of Health and Human Resources is authorized to provide care, support  
9 and protective services for children who are handicapped by dependency, neglect, single parent  
10 status, mental or physical disability, or who for other reasons are in need of public service. The  
11 department is also authorized to accept children for care from their parent or parents, guardian,  
12 custodian or relatives and to accept the custody of children committed to its care by courts. The  
13 Department of Health and Human Resources or any county office of the department is also  
14 authorized and to accept temporary custody of children for care from any law-enforcement officer  
15 in an emergency situation.

16 (b) The Department of Health and Human Resources is responsible for the care of the infant  
17 child of an unmarried mother who has been committed to the custody of the department while the  
18 infant is placed in the same licensed child welfare agency as his or her mother. The department may  
19 provide care for those children in family homes meeting required standards, at board or otherwise,  
20 through a licensed child welfare agency, or in a state institution providing care for dependent or  
21 neglected children. If practical, when placing any child in the care of a family or a child welfare  
22 agency the department shall select a family holding the same religious belief as the parents or

1 relatives of the child or a child welfare agency conducted under religious auspices of the same belief  
2 as the parents or relatives.

3 **§49-2-102. Minimum staffing complement for child protective services.**

4 For the sole purpose of increasing the number of full time front line child protective service  
5 case workers and investigators, the Secretary of the Department of Health and Human Resources  
6 shall have the authority to transfer funds between all general revenue accounts under the secretary's  
7 authority and/or between personnel and nonpersonnel lines within each account under the secretary's  
8 authority. Nothing in this section shall be construed to require the department to hire additional child  
9 protective service workers at any time if the department determines that funds are not available for  
10 those workers. Additionally, the secretary shall prepare a plan to allow the department to  
11 progressively reduce caseload standards in West Virginia for child protective services workers,  
12 which if adopted by the Legislature during the regular session of 1995, shall require implementation  
13 no later than July 1, 1996, with the plan to be submitted to the joint committee on government and  
14 finance by the September 30, 1994, and a final report to be submitted to the Legislature by January  
15 1, 1995.

16 **§49-2-103. Proceedings by the state department.**

17 The state department shall have the authority to institute, in the name of the state,  
18 proceedings incident to the performance of its duties under the provisions of this chapter.

19 **§49-2-104. Education of the public.**

20 The secretary shall provide ongoing education of the public in regard to the requirements of  
21 this chapter through the use of mass media and other methods as are deemed appropriate and within  
22 fiscal limitations.

1 **§49-2-105. Administrative and judicial review.**

2 Any person, corporation, governmental official or child welfare agency, aggrieved by a  
3 decision of the secretary made pursuant to this chapter may contest the decision upon making a  
4 request for a hearing by the secretary within thirty days of receipt of notice of the decision.  
5 Administrative and judicial review shall be made in accordance with article five, chapter  
6 twenty-nine-a of this code. Any decision issued by the secretary may be made effective from the date  
7 of issuance. Immediate relief therefrom may be obtained upon a showing of good cause made by  
8 verified petition to the Circuit Court of Kanawha County or the circuit court of any county where the  
9 affected facility or child welfare agency may be located. The dependency of administrative or judicial  
10 review shall not prevent the secretary from obtaining injunctive relief pursuant to section one  
11 hundred twenty, article two of this chapter.

12 **§49-2-106. Department responsibility for foster care homes.**

13 It is the responsibility of the Department of Health and Human Resources to provide care for  
14 neglected children who are committed to its care for custody or guardianship. The department may  
15 provide this care for children in family homes meeting required standards of certification established  
16 and enforced by the Department of Health and Human Resources.

17 **§49-2-107. Foster-home care; minimum standards; certificate of operation; inspection.**

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

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

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

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

8 **§49-2-108. Visits and inspections; records.**

9 The department or its authorized agent shall visit and inspect every certified foster home as  
10 often as is necessary to assure proper care is given to the children. Every certified foster home shall  
11 maintain a record of the children received. This record shall include information as prescribed by the  
12 department in legislative rule and shall be in a form and manner as prescribed by the department in  
13 legislative rule.

14 **§49-2-109. Placing children from other states in private homes in the state.**

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

20 **§49-2-110. Development of standards of child care.**

21 The department shall develop standards for the care of children. It shall cooperate with,  
22 advise and assist all child welfare agencies, including state institutions, which care for neglected,

1 delinquent, or mentally or physically handicapped children, and shall supervise those agencies. The  
2 department, in cooperation with child welfare agencies, shall formulate and make available standards  
3 of child care and services for children, to which all child welfare agencies must conform.

4 **§49-2-111. Supervision of child welfare agencies by the department; records and reports.**

5 (a) In order to improve standards of child care, the department shall cooperate with the  
6 governing boards of child welfare agencies, assist the staffs of those agencies through advice on  
7 progressive methods and procedures of child care and improvement of the service rendered, and  
8 assist in the development of community plans of child care. The department, or its duly authorized  
9 agent, may visit any child welfare agency to advise the agency on matters affecting the health of  
10 children and to inspect the sanitation of the buildings used for their care.

11 (b) Each child welfare agency shall keep records of each child under its control and care as  
12 the department may prescribe, and shall report to the department, whenever requested, facts as may  
13 be required with reference to the children, upon forms furnished by the department. All records  
14 regarding children and all facts learned about children and their parents or relatives shall be regarded  
15 as confidential and shall be properly safeguarded by the agency and the department.

16 **§49-2-112. Family homes; approval of incorporation by Secretary of State; approval of**  
17 **articles of incorporation.**

18 (a) Before issuing a charter for the incorporation of any organization having as its purpose  
19 the receipt of children for care or for placement in family homes, the Secretary of State shall provide  
20 a copy of the petition, together with any other information in his or her possession pertaining to the  
21 proposed corporation, to the secretary, and no charter for a corporation may be issued unless the  
22 secretary shall first certify to the Secretary of State that it has investigated the need for the services



1 proposed and the merits of the proposed charitable corporation and recommends the issuance  
2 thereof; applications for amendments of any existing charter shall be similarly referred and shall be  
3 granted only upon similar approval.

4 (b) A child welfare agency may not be incorporated in this state unless the articles of  
5 incorporation have first been examined and approved by the secretary, or his or her designee.  
6 Proposed amendments to articles of incorporation shall be subject to the examination and approval  
7 of the secretary, or his or her designee.

8 **§49-2-113. Residential child care centers; licensure, certification, approval and registration;**  
9 **requirements.**

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

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

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

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

21 (e) This section does not apply to:

22 (1) A kindergarten, preschool or school education program which is operated by a public

1 school or which is accredited by the state Department of Education, or any other kindergarten,  
2 preschool or school programs which operate with sessions not exceeding four hours per day for any  
3 child;

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

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

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

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

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

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

18 (8) Any out-of-school time program serving children six years of age or older and meets all  
19 of the following requirements, or is an out-of-school time program that is affiliated and in good  
20 standing with a national Congressionally chartered organization and meets all of the following  
21 requirements:

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

- 1 (B) The program performs background checks on all volunteers and staff;
- 2 (C) The program's primary source of funding is not from fees for service; and
- 3 (D) The program has a formalized monitoring system in place.
- 4 (f) The secretary is authorized to issue an emergency rule relating to conducting a survey of
- 5 existing facilities in this state in which children reside on a temporary basis in order to ascertain
- 6 whether they should be subject to licensing under this article or applicable licensing provisions
- 7 relating to behavioral health treatment providers.
- 8 (g) Any informal family child care home or relative family child care home may voluntarily
- 9 register and obtain a certificate of registration from the department.
- 10 (h) All facilities or programs that provide out-of-school time care shall register with the
- 11 department upon commencement of operations and on an annual basis thereafter. The department
- 12 shall obtain information, such as the name of the facility or program, the description of the services
- 13 provided and any other information relevant to the determination by the department as to whether
- 14 the facility or program meets the criteria for exemption under this section.
- 15 (i) Any child care service that is licensed or receives a certificate of registration shall have
- 16 a written plan for evacuation in the event of fire, natural disaster or other threatening situation that
- 17 may pose a health or safety hazard to the children in the child care service.
- 18 (1) The plan shall include, but not be limited to:
- 19 (A) A designated relocation site and evacuation;
- 20 (B) Procedures for notifying parents of the relocation and ensuring family reunification;
- 21 (C) Procedures to address the needs of individual children including children with special
- 22 needs;

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

3 (E) Coordination with local emergency management officials; and

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

5 (2) A child care service shall update the evacuation plan by December 31, of each year. If a  
6 child care service fails to update the plan, no action shall be taken against the child care service's  
7 license or registration until notice is provided and the child care service is given thirty days after the  
8 receipt of notice to provide an updated plan.

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

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

16 **§49-2-114. Application for license or approval.**

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

21 (b) The secretary shall prescribe forms and reasonable application procedures including, but  
22 not limited to, fingerprinting of applicants and other persons responsible for the care of children for

1 submission to the State Police and, if necessary, to the Federal Bureau of Investigation for criminal  
2 history record checks.

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

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

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

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

15 (3) Discipline;

16 (4) Fire and environmental safety;

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

18 (6) Health, sanitation and nutrition.

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

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

1 **§49-2-115. Conditions of licensure, approval and registration.**

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

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

9 (c) A provisional license or approval may be issued when a licensee is not in compliance with  
10 the legislative rules promulgated by the secretary but does not pose a significant risk to the rights,  
11 well-being, health and safety of a consumer. It shall expire not more than six months from date of  
12 issuance, and not be consecutively reissued unless the provisional recommendation is that of the  
13 State Fire Marshal.

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

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

22 (f) The license, approval or registration issued under this article is not transferable and

1 applies only to the facility and its location stated in the application. The license, registration or  
2 approval shall be publicly displayed. The foster and adoptive family homes, informal family child  
3 care homes and relative family child care homes shall be required to display registration certificates  
4 of registration or approval upon request rather than by posting.

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

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

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

9 (2) Prohibit intake of any children; or

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

12 **§49-2-116. Investigative authority; evaluation; complaint.**

13 (a) The secretary shall enforce this article.

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

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

20 (d) The secretary shall have access to the premises, personnel, children in care and records  
21 of each facility subject to inspection, including at a minimum, case records, corporate and financial  
22 records and board minutes. Applicants for licenses, approvals, and certificates of registration shall

1 consent to reasonable on-site administrative inspections, made with or without prior notice, as a  
2 condition of licensing, approval, or registration.

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

7 (f) The secretary may enter any unlicensed, unregistered or unapproved child care facility or  
8 personal residence for which there is probable cause to believe that the facility or residence is  
9 operating in violation of this article. Those entries shall be made with a law-enforcement officer  
10 present. The secretary may enter upon the premises of any unregistered residence only after two  
11 attempts by the secretary to bring this facility into compliance.

12 **§49-2-117. Revocation; provisional licensure and approval.**

13 (a) The secretary may revoke or make provisional the licensure registration of any home  
14 facility or child welfare agency regulated pursuant to this chapter if a facility materially violates this  
15 article, or any terms or conditions of the license, registration or approval issued, or fails to maintain  
16 established requirements of child care. This section does not apply to family child care homes.

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

20 **§49-2-118. Closing of facilities by the secretary; placement of children.**

21 When the secretary finds that the operation of a facility constitutes an immediate danger of  
22 serious harm to children served by the facility, the secretary shall issue an order of closure



1 terminating operation of the facility. When necessary, the secretary shall place or direct the  
2 placement of the children in a residential facility which has been closed into appropriate facilities.  
3 A facility closed by the secretary may not operate pending administrative or judicial review without  
4 court order.

5 **§49-2-119. Supervision; consultation; State Fire Marshall to cooperate.**

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

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

14 **§49-2-120. Penalties; injunctions; venue.**

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

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

21 (c) Where a violation of this article or a legislative rule promulgated by the secretary may  
22 result in serious harm to children under care, the secretary may seek injunctive relief against any

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

5 **§49-2-121. Rule-making.**

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

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

14 (c) The rules shall incorporate by reference the requirements of the Integrated Pest  
15 Management Program established by legislative rule by the Department of Agriculture under section  
16 four, article sixteen-a, chapter nineteen of this code.

17 **§49-2-122. Waivers and variances to rules.**

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

22 **§49-2-123. Annual reports; directory; licensing reports and recommendations.**

1 (a) The secretary shall submit on or before January 1, of each year a report to the Governor  
2 and the Legislative Oversight Commission on Health and Human Resources Accountability,  
3 concerning the regulation of child welfare agencies, child placing agencies, child care centers, family  
4 child care facilities, family child care homes, informal family child care homes, relative family child  
5 care homes and child care facilities during the year. The report shall include at a minimum, data  
6 on the number of children and staff at each facility (except family child care, informal family child  
7 care homes and relative family child care), applications received, types of licenses, approvals and  
8 registrations granted, denied, made provisional or revoked and any injunctions obtained or facility  
9 closures ordered.

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

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

17 **§49-2-124. Certificate of need not required; conditions; review.**

18 (a) A certificate of need, as provided in article two-d, chapter sixteen of this code, is not  
19 required by an entity proposing behavioral health care facilities or behavioral health care services  
20 for children who are placed out of their home, or who are at imminent risk of being placed out of  
21 their home, if a summary review is performed in accordance with this section.

22 (b) A summary review of proposed health care facilities or health care services for children

1 who are placed out of their home, or who are at imminent risk of being placed out of their home, is  
2 initiated when the proposal is recommended to the health care cost review authority by the Secretary  
3 of the Department of Health and Human Resources and the secretary has made the following  
4 findings:

5 (1) That the proposed facility or service is consistent with the state health plan;

6 (2) That the proposed facility or service is consistent with the department's programmatic  
7 and fiscal plan for behavioral health services for children with mental health and addiction disorders;

8 (3) That the proposed facility or service contributes to providing services that are child and  
9 family driven, with priority given to keeping children in their own homes;

10 (4) That the proposed facility or service will contribute to reducing the number of child  
11 placements in out-of-state facilities by making placements available in in-state facilities;

12 (5) That the proposed facility or service contributes to reducing the number of child  
13 placements in in-state or out-of-state facilities by returning children to their families, placing them  
14 in foster care programs or making available school-based and out-patient services; and

15 (6) If applicable, that the proposed services will be community-based, locally accessible and  
16 provided in an appropriate setting consistent with the unique needs and potential of each child and  
17 his or her family.

18 (c) The secretary's findings required by subsection (b) of this section shall be filed with the  
19 secretary's recommendation and appropriate documentation. If the secretary's findings are supported  
20 by the accompanying documentation, the proposal shall not require a certificate of need.

21 (d) Any entity that does not qualify for summary review shall be subject to certificate of need  
22 review.

1 (e) Notwithstanding any other provision of law to the contrary, the provision of regular or  
2 therapeutic foster care services does not constitute a behavioral health care facility or a behavioral  
3 health care service that would subject it to the summary review procedure established in this section  
4 or to the certificate of need requirements provided in article two-d, chapter sixteen of this code.

5 **§49-2-125. Commission to Study Residential Placement of Children; findings; requirements;**  
6 **reports; recommendations; termination.**

7 (a) The Legislature finds that the state’s current system of serving children and families in  
8 need of or at risk of needing social, emotional and behavioral health services is fragmented. The  
9 existing categorical structure of government programs and their funding streams discourages  
10 collaboration, resulting in duplication of efforts and a waste of limited resources. Children are  
11 usually involved in multiple child-serving systems, including child welfare, juvenile justice and  
12 special education. More than ten percent of children presently in care are presently in out-of-state  
13 placements. Earlier efforts at reform have focused on quick fixes for individual components of the  
14 system at the expense of the whole. It is the purpose of this section to establish a mechanism to  
15 achieve systemic reform by which all of the state’s child-serving agencies involved in the residential  
16 placement of at-risk youth jointly and continually study and improve upon this system and make  
17 recommendations to their respective agencies and to the Legislature regarding funding and statutory,  
18 regulatory and policy changes. It is further the Legislature’s intent to build upon these  
19 recommendations to establish an integrated system of care for at-risk youth and families that makes  
20 prudent and cost-effective use of limited state resources by drawing upon the experience of  
21 successful models and best practices in this and other jurisdictions, which focuses on delivering  
22 services in the least restrictive setting appropriate to the needs of the child, and which produces

1 better outcomes for children, families and the state.

2           (b) There is created within the Department of Health and Human Resources the Commission  
3 to Study the Residential Placement of Children. The commission consists of the Secretary of the  
4 Department of Health and Human Resources, the Commissioner of the Bureau for Children and  
5 Families, the Commissioner for the Bureau for Behavioral Health and Health Facilities, the  
6 Commissioner for the Bureau for Medical Services, the State Superintendent of Schools, a  
7 representative of local educational agencies, the Director of the Office of Institutional Educational  
8 Programs, the Director of the Office of Special Education Programs and Assurance, the Director of  
9 the Division of Juvenile Services and the Executive Director of the Prosecuting Attorney's Institute.  
10 At the discretion of the West Virginia Supreme Court of Appeals, circuit and family court judges and  
11 other court personnel, including the Administrator of the Supreme Court of Appeals and the Director  
12 of the Juvenile Probation Services Division, may serve on the commission. These statutory members  
13 may further designate additional persons in their respective offices who may attend the meetings of  
14 the commission if they are the administrative head of the office or division whose functions  
15 necessitate their inclusion in this process. In its deliberations, the commission shall also consult and  
16 solicit input from families and service providers.

17           (c) The Secretary of the Department of Health and Human Resources shall serve as chair of  
18 the commission, which shall meet on a quarterly basis at the call of the chair.

19           (d) At a minimum, the commission shall study:

20           (1) The current practices of placing children out-of-home and into in-residential placements,  
21 with special emphasis on out-of-state placements;

22           (2) The adequacy, capacity, availability and utilization of existing in-state facilities to serve

- 1 the needs of children requiring residential placements;
- 2 (3) Strategies and methods to reduce the number of children who must be placed in  
3 out-of-state facilities and to return children from existing out-of-state placements, initially targeting  
4 older youth who have been adjudicated delinquent;
- 5 (4) Staffing, facilitation and oversight of multidisciplinary treatment planning teams;
- 6 (5) The availability of and investment in community-based, less restrictive and less costly  
7 alternatives to residential placements;
- 8 (6) Ways in which up-to-date information about in-state placement availability may be made  
9 readily accessible to state agency and court personnel, including an interactive secure web site;
- 10 (7) Strategies and methods to promote and sustain cooperation and collaboration between the  
11 courts, state and local agencies, families and service providers, including the use of inter-agency  
12 memoranda of understanding, pooled funding arrangements and sharing of information and staff  
13 resources;
- 14 (8) The advisability of including "no-refusal" clauses in contracts with in-state providers for  
15 placement of children whose treatment needs match the level of licensure held by the provider;
- 16 (9) Identification of in-state service gaps and the feasibility of developing services to fill  
17 those gaps, including funding;
- 18 (10) Identification of fiscal, statutory and regulatory barriers to developing needed services  
19 in-state in a timely and responsive way;
- 20 (11) Ways to promote and protect the rights and participation of parents, foster parents and  
21 children involved in out-of-home care;
- 22 (12) Ways to certify out-of-state providers to ensure that children who must be placed

1 out-of-state receive high quality services consistent with this state's standards of licensure and rules  
2 of operation; and

3 (13) Any other ancillary issue relative to foster care placement.

4 (e) The commission shall report annually to the Legislative Oversight Commission on Health  
5 and Human Resources Accountability its conclusions and recommendations, including an  
6 implementation plan whereby:

7 (1) Out-of-state placements shall be reduced by at least ten percent per year and by at least  
8 fifty percent within three years;

9 (2) Child-serving agencies shall develop joint operating and funding proposals to serve the  
10 needs of children and families that cross their jurisdictional boundaries in a more seamless way;

11 (3) Steps shall be taken to obtain all necessary federal plan waivers or amendments in order  
12 for agencies to work collaboratively while maximizing the availability of federal funds;

13 (4) Agencies shall enter into memoranda of understanding to assume joint responsibilities;

14 (5) System of care components and cooperative relationships shall be incrementally  
15 established at the local, state and regional levels, with links to existing resources, such as family  
16 resource networks and regional summits, wherever possible; and

17 (6) Recommendations for changes in fiscal, statutory and regulatory provisions are included  
18 for legislative action.

19 (f) The commission shall terminate on December 31, 2015, unless continued by act of the  
20 Legislature.

21 PART II. HOME-BASED FAMILY PRESERVATION ACT

22 **§49-2-201. Findings and purpose.**



1           The Legislature finds that there exists a need in this state to assist dysfunctional families by  
2 providing nurture and care to those families' children as an alternative to removing children from the  
3 families.

4           The Legislature also finds that the family is the primary social institution responsible for  
5 meeting the needs of children and that the state has an obligation to assist families in this regard.

6           The Legislature further finds that children have significant emotional and social ties to the  
7 natural or surrogate family beyond basic care and nurture for which the family is responsible.

8           The purpose of this article is to establish a pilot program to evaluate the utility of providing  
9 intensive intervention with the families of children that are at risk of being removed from the home.  
10 For these limited purposes, the department is authorized to use available appropriate funds for that  
11 intervention service, but only to the extent that moneys would normally be available for the removal  
12 and placement of the particular child at risk.

13 **§49-2-202. When family preservation services required.**

14           Home-based family preservation services are required in all cases where the removal of a  
15 child or children is seriously being considered, whether from a natural home or a surrogate home,  
16 wherein a child or children have lived for a substantial period of time. However, those services are  
17 not required when the child appears in imminent danger of serious bodily or serious emotional  
18 injury.

19 **§49-2-203. Caseload limits for home-based preservation services.**

20           For purposes of this article, no contractor employee of the department may exceed three  
21 families during any period of time when that contractor employee is engaged in providing intensive,  
22 short term home-based family preservation intervention. In addition, no caseload may exceed six

1 families during any period of time when home-based aftercare is provided pursuant to this article.  
2 When providing either type of home-based family preservation services to any family, the  
3 department or contractor shall provide trained personnel who shall be available during nonworking  
4 hours to assist families on an emergency basis.

5 **§49-2-204. Situational criteria requiring service.**

6 The services required by this article shall be made available to any dysfunctional family in  
7 which there exists an imminent risk of placement of at least one child outside the home as the result  
8 of abuse, neglect, dependency or delinquency or any emotional and behavioral problems. Payment  
9 for contractual services shall be on a cost-per-family basis. Any renewal of a contract shall be based  
10 on performance.

11 **§49-2-205. Service delivery through service contracts; accountability.**

12 The services required by this article which are not practically deliverable directly from the  
13 department may be subcontracted to professionally qualified private individuals, associations,  
14 agencies, corporations, partnerships or groups. The service provider shall be required to submit  
15 monthly activity reports as to any services rendered to the department of health and human resources.  
16 The activity reports shall include project evaluation in relation to individual families being served  
17 as well as statistical data concerning families that are referred for services which are not served due  
18 to unavailability of resources. The costs of program evaluation are an allowable cost consideration  
19 in any service contract negotiated in accordance with this article. The department shall conduct a  
20 thorough investigation of the contractors utilized by the department pursuant to this article.

21 **§49-2-206. Special services to be provided.**

22 The costs of providing special services to families receiving regular services in accordance

1 with this article are allowable to the extent those goods and services are justified pursuant to carrying  
2 out the purposes of this article. Those special services may include, but are not limited to,  
3 homemaker assistance, food, clothing, educational materials, respite care and recreational or social  
4 activities.

5 **§49-2-207. Development of home-based family preservation services.**

6 The department is authorized to use appropriate state, federal, and/or private funds within  
7 its budget for the provision of family preservation and reunification services. Appropriated state  
8 funding made available through capture of additional federal funds shall be utilized to provide family  
9 preservation and reunification services as described in this article. Costs of providing home-based  
10 services described in this article shall not exceed the costs of out-of-home care which would be  
11 incurred otherwise.

12 PART III.

13 QUALITY IMPROVEMENT AND RATING SYSTEM FOR CHILD CARE.

14 **§49-2-301. Findings and intent; advisory council.**

15 (a) The Legislature finds that:

16 (1) High quality early childhood development substantially improves the intellectual and  
17 social potential of children and reduces societal costs;

18 (2) A child care program quality rating and improvement system provides incentives and  
19 resources to improve the quality child care programs; and

20 (3) A child care program quality rating and improvement system provides information about  
21 the quality of child care programs to parents so they may make more informed decisions about the  
22 placement of their children.

1 (b) It is the intent of the Legislature to require the Secretary of the Department of Health and  
2 Human Resources promulgate a legislative rule and establish a plan for the phased implementation  
3 of a child care program quality rating and improvement system not inconsistent with the provisions  
4 of this article.

5 (c) The Secretary of the Department of Health and Human Resources shall create a Quality  
6 Rating and Improvement System Advisory Council to provide advice on the development of the rule  
7 and plan for the phased implementation of a child care program quality rating and improvement  
8 system and the ongoing program review and policies for quality improvement. The secretary shall  
9 facilitate meetings of the advisory council. The advisory council shall include representatives from  
10 the provider community, advocacy groups, the Legislature, providers of professional development  
11 services for the early childhood community, regulatory agencies and others who may be impacted  
12 by the creation of a quality rating and improvement system.

13 (d) Nothing in this article requires an appropriation, or any specific level of appropriation,  
14 by the Legislature.

15 **§49-2-302. Creation of statewide quality rating system; rule-making; minimum requirements.**

16 (a) The Secretary of the Department of Health and Human Resources shall propose rules for  
17 legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this  
18 code to implement a quality rating and improvement system. The quality rating and improvement  
19 system shall be applicable to licensed child care centers and facilities and registered family child care  
20 homes. If other types of child care settings, such as school-age child care programs become licensed  
21 after the implementation of a statewide quality rating and improvement system, the secretary may  
22 develop quality criteria and incentives that will allow the other types of child care settings to

1 participate in the quality rating and improvement system. The rules shall include, but are not limited  
2 to, the following:

3 (1) A four-star rating system for registered family child care homes and a four-star rating  
4 system for all licensed programs, including family child care facilities and child care centers, to  
5 easily communicate to consumers four progressively higher levels of quality child care. One star  
6 indicating meeting the minimum acceptable standard and four stars indicating meeting or exceeding  
7 the highest standard. The system shall reflect the cumulative attainment of the standards at each level  
8 and all lesser levels. However, any program accredited by the National Association for the  
9 Education of Young Children or the National Association for Family Child Care, as applicable, shall  
10 automatically be awarded four-star status;

11 (2) Program standards for registered family child care homes and program standards for all  
12 licensed programs, including family child care facilities and child care centers, that are each divided  
13 into four levels of attributes that progressively improve the quality of child care beginning with basic  
14 state registration and licensing requirements at level one, through achievement of a national  
15 accreditation by the appropriate organization at level four. Participation beyond the first level is  
16 voluntary. The program standards shall be categorized using the West Virginia State Training and  
17 Registry System Core Knowledge Areas or its equivalent;

18 (3) Accountability measures that provide for a fair, valid, accurate and reliable assessment  
19 of compliance with quality standards, including, but not limited to:

20 (A) Evaluations conducted by trained evaluators with appropriate early childhood education  
21 and training on the selected assessment tool and with a demonstrated inter-rater reliability of  
22 eighty-five percent or higher. The evaluations shall include an on-site inspection conducted at least

1 annually to determine whether programs are rated correctly and continue to meet the appropriate  
2 standards. The evaluations and observations shall be conducted on at least a statistically valid  
3 percentage of center classrooms, with a minimum of one class per age group;

4 (B) The use of valid and reliable observation and assessment tools, such as environmental  
5 rating scales for early childhood, infant and toddler, school-age care and family child care as  
6 appropriate for the particular setting and age group;

7 (C) An annual self-assessment using the proper observation and assessment tool for programs  
8 rated at two stars; and

9 (D) Model program improvement planning shall be designed to help programs improve their  
10 evaluation results and level of program quality.

11 (b) The rules required pursuant to this section shall include policies relating to the review,  
12 reduction, suspension or disqualification of child care programs from the quality rating and  
13 improvement system.

14 (c) The rules shall provide for implementation of the statewide quality rating system effective  
15 July 1, 2011, subject to section three hundred four of this article.

16 **§49-2-303. Statewide quality improvement system; financial plan; staffing requirements;**  
17 **public awareness campaign; management information system; financial**  
18 **assistance for child care programs; program staff; child care consumers.**

19 Attached to the proposed rules required in section three hundred two of this article, the  
20 Secretary of the Department of Health and Human Resources shall submit a financial plan to support  
21 the implementation of a statewide quality rating and improvement system and help promote quality  
22 improvement. The financial plan shall be considered a part of the rule and shall include specific

1 proposals for implementation of the provisions of this section as determined by the secretary. The  
2 plan shall address, but is not limited to, the following:

3 (1) State agency staffing requirements may include the following:

4 (A) Highly trained evaluators to monitor the assessment process and ensure inter-rater  
5 reliability of eighty-five percent or higher;

6 (B) Technical assistance staff responsible for career advising, accreditation support services,  
7 improvement planning, portfolio development and evaluations for improvement planning only. The  
8 goal for technical assistance staffing is to ensure that individualized technical assistance is available  
9 to participating programs;

10 (C) A person within the department to collaborate with other professional development  
11 providers to maximize funding for training, scholarships and professional development. The person  
12 filling this position also shall encourage community and technical colleges to provide courses  
13 through nontraditional means, such as online training, evening classes and off-campus training;

14 (D) Additional infant and toddler specialists to provide high level professional development  
15 for staff caring for infants and to provide on-site assistance with infant and toddler issues;

16 (E) At least one additional training specialist at each of the child care resource and referral  
17 agencies to support new training topics and to provide training for school-age child care programs.  
18 Training providers, such as the child care resource and referral agencies shall purchase new training  
19 programs on topics, such as business management, the Devereux Resiliency Training and Mind in  
20 the Making; and

21 (F) Additional staff necessary for program administration;

22 (2) Implementation of a broad public awareness campaign and communication strategies that

1 may include the following:

2 (A) Brochures, internet sites, posters, banners, certificates, decals and pins to educate parents;

3 and

4 (B) Strategies, such as earned media campaigns, paid advertising campaigns, e-mail and  
5 internet-based outreach, face-to-face communication with key civic groups and grassroots organizing  
6 techniques; and

7 (3) Implementation of an internet-based management information system that meets the  
8 following requirements:

9 (A) The system shall allow for multiple agencies to access and input data;

10 (B) The system shall provide the data necessary to determine if the quality enhancements  
11 result in improved care and better outcomes for children;

12 (C) The system shall allow access by Department of Health and Human Resources subsidy  
13 and licensing staff, child care resource and referral agencies, the agencies that provide training and  
14 scholarships, evaluators and the child care programs;

15 (D) The system shall include different security levels in order to comply with the numerous  
16 confidentiality requirements;

17 (E) The system shall assist in informing practice; determining training needs; and tracking  
18 changes in availability of care, cost of care, changes in wages and education levels; and

19 (F) The system shall provide accountability for child care programs and recipients and assure  
20 funds are being used effectively;

21 (4) Financial assistance for child care programs needed to improve learning environments,  
22 attain high ratings and sustain long-term quality without passing additional costs on to families that



1 may include, but are not limited to:

2 (A) Assistance to programs in assessment and individual program improvement planning and  
3 providing the necessary information, coaching and resources to assist programs to increase their level  
4 of quality;

5 (B) Subsidizing participating programs for providing child care services to children of  
6 low-income families in accordance with the following:

7 (i) Base payment rates shall be established at the seventy-fifth percentile of market rate; and

8 (ii) A system of tiered reimbursement shall be established which increases the payment rates  
9 by a certain amount above the base payment rates in accordance with the rating tier of the child care  
10 program;

11 (C) Two types of grants shall be awarded to child care programs in accordance with the  
12 following:

13 (i) An incentive grant shall be awarded based on the type of child care program and the level  
14 at which the child care program is rated with the types of child care programs having more children  
15 and child care programs rated at higher tiers being awarded a larger grant than the types of child care  
16 programs having less children and child care programs rated at lower tiers; and

17 (ii) Grants for helping with the cost of national accreditation shall be awarded on an equitable  
18 basis.

19 (5) Support for increased salaries and benefits for program staff to increase educational levels  
20 essential to improving the quality of care that may include, but are not limited to:

21 (A) Wage supports and benefits provided as an incentive to increase child care programs  
22 ratings and as an incentive to increase staff qualifications in accordance with the following:

- 1 (i) The cost of salary supplements shall be phased in over a five-year period;
- 2 (ii) The Secretary of the Department of Health and Human Resources shall establish a salary  
3 scale for each of the top three rating tiers that varies the salary support based on the education of the  
4 care giver and the rating tier of the program; and
- 5 (iii) Any center with at least a tier two rating that employs at least one staff person  
6 participating in the scholarship program required pursuant to paragraph (B) of this subdivision or  
7 employs degree staff may apply to the Secretary of the Department of Health and Human Resources  
8 for funding to provide health care benefits based on the Teacher Education and Compensation Helps  
9 model in which insurance costs are shared among the employees, the employer and the state; and
- 10 (B) The provision of scholarships and establishment of professional development plans for  
11 center staff that would promote increasing the credentials of center staff over a five-year period; and
- 12 (6) Financial assistance to the child care consumers whose income is at two hundred percent  
13 of the federal poverty level or under to help them afford the increased market price of child care  
14 resulting from increased quality.

15 **§49-2-304. Quality rating and improvement system pilot projects; independent third-party**  
16 **evaluation; modification of proposed rule and financial plan; report to**  
17 **Legislature; limitations on implementation.**

18 The secretary shall report annually to the Legislature on the progress on development and  
19 implementation of a child care quality rating and improvement system and its impact on improving  
20 the quality of child care in the state. The secretary may propose amendments to the rules and  
21 financial plan necessary to promote implementation of the quality rating and improvement system  
22 and improve the quality of child care and may recommend needed legislation. Nothing in this article

1 requires the implementation of a quality rating and improvement system unless funds are  
2 appropriated therefore. The secretary may prioritize the components of the financial plan for  
3 implementation and quality improvement for funding purposes. If insufficient funds are appropriated  
4 for full implementation of the quality rating and improvement system, the rules shall provide for  
5 gradual implementation over a period of several years.

6 PART IV. CHILDREN'S TRUST FUND.

7 **§49-2-401. Continuation, transfer and renaming of trust fund; funding.**

8 (a) The Children's Fund, created for the sole purpose of awarding grants, loans and loan  
9 guarantees for child abuse and neglect prevention activities by enactment of chapter twenty-seven,  
10 Acts of the Legislature, 1984, as last amended and reenacted by chapter one hundred fifty-nine, Acts  
11 of the Legislature, 1999, is hereby continued and renamed the West Virginia Children's Trust Fund.  
12 The fund shall be administered by the Commissioner of the Bureau for Children and Families. Gifts,  
13 bequests or donations for this purpose, in addition to appropriations to the fund, shall be deposited  
14 in the State Treasury in a special revenue account under the control of the Secretary of the  
15 Department of Health and Human Resources or his or her designee.

16 (b) Each state taxpayer may voluntarily contribute a portion of the taxpayer's state income  
17 tax refund to the Children's Trust Fund by designating the contribution on the state personal income  
18 tax return form. The bureau shall approve the wording of the designation on the income tax return  
19 form. The State Tax Commissioner shall determine by July 1, of each year the total amount  
20 designated pursuant to this subsection and shall report that amount to the State Treasurer, who shall  
21 credit that amount to the Children's Trust Fund.

22 (c) All interest accruing from investment of moneys in the Children's Trust Fund shall be

1 credited to the fund. The Legislative Auditor shall conduct an audit of the fund at least every five  
2 fiscal years.

3 (d) Grants, loans and loan guarantees may be awarded from the Children's Trust Fund by the  
4 Commissioner of the Bureau for Children and Families for child abuse and neglect prevention  
5 activities.

6 (e) Upon the effective date of the enactment of this section, all employees, records,  
7 responsibilities, obligations, assets and property, of whatever kind and character, of the Governor's  
8 Cabinet on Children and Families are hereby transferred to the Bureau for Children and Families  
9 within the Department of Health and Human Resources, including, but not limited to, all rights and  
10 obligations held by the Governor's Cabinet on Children and Families under any grants, loans or loan  
11 guarantees previously awarded from the Children's Trust Fund.

12 (f) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers,  
13 bonds, authorizations and privileges which have been issued, made, granted or allowed to become  
14 effective by the Governor, by any state department or agency or official thereof, or by a court of  
15 competent jurisdiction, in the performance of functions which have been transferred to the Bureau  
16 for Children and Families within the Department of Health and Human Resources, and were in effect  
17 on the date the transfer occurred continue in effect, for the benefit of the department, according to  
18 their terms until modified, terminated, superseded, set aside or revoked in accordance with the law  
19 by the Governor, the Secretary of the Department of Health and Human Resources or other  
20 authorized official, a court of competent jurisdiction or by operation of law.

21 PART V. CHILDREN WITH SPECIAL NEEDS.

22 **§49-2-501. Children to whom article applies; intent.**

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

4 **§49-2-502. Powers of the secretary.**

5           In the care and treatment of children with special health care needs the Secretary of the  
6 Department of Health and Human Resources shall, so far as funds are available for the following  
7 purposes:

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

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

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

14 **§49-2-503. Report of birth of special health care needs child.**

15          Within thirty days after the birth of a child with a congenital deformity, the physician,  
16 midwife or other person attending the birth shall report to the Department of Health and Human  
17 Resources, on forms prescribed by them, the birth of the child.

18          The report shall be solely for the use of the Department of Health and Human Resources and  
19 shall not be open for public inspection.

20 **§49-2-504. Assistance by other agencies.**

21          So far as practicable, the services and facilities of the State Department of Education, The  
22 Division of Vocational Rehabilitation Services and Division of Corrections or their successor

1 organizations shall be available to the Department of Health and Human Resources for the purposes  
2 of this article.

3 **§49-2-505. Cost of treatment.**

4 All payments from any corporation, association, program or fund providing insurance  
5 coverage or other payment for medicine, medical, surgical and hospital treatment, crutches, artificial  
6 limbs and those other and additional approved mechanical appliances and devices as may be  
7 reasonably required for a child with special health care needs, shall be applied toward the total cost  
8 of treatment.

9 PART VI. WEST VIRGINIA FAMILY SUPPORT PROGRAM.

10 **§49-2-601. Findings; intent.**

11 (a) The West Virginia Legislature finds that families are the greatest resource available to  
12 individuals with developmental disabilities, and they must be supported in their role as primary  
13 caregivers. It further finds that supporting families in their effort to care for their family members  
14 at home is more efficient, cost effective and humane than placing the developmentally disabled  
15 person in an institutional setting.

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

18 (1) The quality of life of children with developmental disabilities, their families and  
19 communities is enhanced by caring for the children within their own homes. Children with  
20 disabilities benefit by growing up in their own families, families benefit by staying together and  
21 communities benefit from the inclusion of people with diverse abilities.

22 (2) Adults with developmental disabilities should be afforded the opportunity to make

1 decisions for themselves, live in typical homes and communities and exercise their full rights as  
2 citizens. Developmentally disabled adults should have the option of living separately from their  
3 families but when this is not the case, families of disabled adults should be provided the support  
4 services they need.

5 (3) Services and support for families should be individualized and flexible, should focus on  
6 the entire family and should promote the inclusion of people with developmental disabilities in all  
7 aspects of school and community life.

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

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

13 (d) To maximize the number of families supported by this program, each family will  
14 contribute to the cost of goods and 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 initiate, within the resources available, a  
17 program of services to support families who are caring for family members with developmental  
18 disabilities in their homes.

19 **§49-2-602. Family support services; responsibilities; funds; case management; outreach;**  
20 **differential fees.**

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

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

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

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

19 (c) As part of the family support program, the regional family support agency, designated  
20 under section six hundred two of this article, shall provide case management for each family to  
21 provide information, service coordination and other assistance as needed by the family.

22 (d) The family support program shall assist families of developmentally disabled adults in



1 planning and obtaining community living arrangements, employment services and other resources  
2 needed to achieve, to the greatest extent possible, independence, productivity and integration of the  
3 developmentally disabled adult into the community.

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

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

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

13 **§49-2-603. Eligibility; primary focus.**

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

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

20 **§49-2-604. Program administration; implementation; procedures; annual evaluation;**  
21 **coordination; plans; grievances; reports.**

22 (a) The administering agency for the family support program is the Department of Health and

1 Human Resources.

2 (b) The Department of Health and Human Resources shall initially implement the family  
3 support program through contracts with an agency within four of the state's behavioral health  
4 regions, with the four regions to be determined by the Department of Health and Human Resources  
5 in consultation with the state family support council. These regional family support agencies of the  
6 family support program will be responsible for implementing this article and subsequent policies for  
7 the families of persons with developmental disabilities residing within their respective regions.

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

10 (1) Development of annual budgets;

11 (2) Program specifications;

12 (3) Criteria for awarding contracts for operation of regional family support programs and the  
13 role of regional family support councils;

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

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

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

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

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

22 (d) The Department of Health and Human Resources shall submit a report to the Governor

1 and the Legislature on the family support program by September 15, of every year so long as the  
2 program is funded.

3 **§49-2-605. Regional and state family support councils; membership; meetings;**  
4 **reimbursement of expenses.**

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

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

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

22 (d) Members of the state and regional councils who are a member of the family or the

1 primary caregiver of a developmentally disabled person shall be reimbursed for travel and lodging  
2 expenses incurred in attending official meetings of their councils. Child care expenses related to the  
3 developmentally disabled person shall also be reimbursed. Members of regional councils who are  
4 eligible for expense reimbursement shall be reimbursed by their respective regional family support  
5 agencies.

6 PART VII. CAREGIVERS CONSENT ACT.

7 **§49-2-701. Caregiver consent for minor’s health care; treatment.**

8 (a) Except for minor children placed under the custody of the Department of Health and  
9 Human Resources pursuant to proceedings established by this chapter, a caregiver who possesses  
10 and presents a notarized affidavit pursuant to section seven hundred three of this article may consent  
11 on behalf of a minor to health care and treatment.

12 (b) Examination and treatment shall be prescribed by or under the supervision of a physician,  
13 advanced practice nurse, dentist or mental health professional licensed to practice in the state.

14 **§49-2-702. Duty of health care facility or practitioner.**

15 The decision of a caregiver who possesses and presents a notarized affidavit of caregiver  
16 consent for a minor’s health care pursuant to section seven hundred three of this article shall be  
17 honored by a health care facility or practitioner unless the health care facility or practitioner has  
18 actual knowledge that a parent, legal custodian or guardian of a minor has made a contravening  
19 decision to consent to or to refuse medical treatment for the minor.

20 **§49-2-703. Affidavit of caregiver consent; requirements.**

21 An affidavit of caregiver consent for a minor’s health care shall include the following:

22 (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 caregiver;
- 6 (7) The caregiver's signature under oath affirming the truth of the matter asserted in the  
7 affidavit;
- 8 (8) The signature of the minor's parent, guardian or legal custodian consenting to the  
9 caregiver's authority over the minor's health care. The signature of the minor's parent, guardian or  
10 legal custodian is not necessary if the affidavit includes the following:
- 11 (A) A statement that the caregiver has attempted, but has been unable to obtain, the signature  
12 of the minor's parent, guardian or legal custodian;
- 13 (B) A statement that the minor's parent, guardian or legal custodian has not refused to give  
14 consent for health care and treatment of the minor child; and
- 15 (C) A description, in detail, of the attempts the caregiver made to obtain the signature of the  
16 minor's parent, guardian or legal custodian; and
- 17 (9) A statement, as follows:
- 18 "General Notices:
- 19 This declaration does not affect the rights of the minor's parent, guardian or legal custodian  
20 regarding the care, custody and control of the minor, other than with respect to health care, and does  
21 not give the caregiver legal custody of the minor.
- 22 This affidavit is valid for one year unless the minor no longer resides in the caregiver's home.

1 Furthermore, the minor’s parent, guardian or legal custodian may at any time rescind this affidavit  
2 of caregiver consent for a minor’s health care by providing written notification of the rescission to  
3 the appropriate health care professional.

4 A person who relies in good faith on this affidavit of caregiver consent for a minor’s health  
5 care has no obligation to conduct any further inquiry or investigation and is not subject to civil or  
6 criminal liability or to professional disciplinary action because of that reliance.”

7 **§49-2-704. Revocation and termination of consent; written notice; validity.**

8 (a) The affidavit of caregiver consent for a minor’s health care is superseded by written  
9 notification from the minor’s parent, guardian or legal custodian to the health care professionals  
10 providing services to the minor that the affidavit has been rescinded.

11 (b) The affidavit of caregiver consent for a minor’s health care is valid for one year unless  
12 the minor no longer resides in the caregiver’s home or a parent, guardian or legal custodian revokes  
13 his or her approval by written notification to the health care professionals providing services to the  
14 minor that the affidavit has been rescinded. If a parent, guardian or legal custodian revokes approval,  
15 the caregiver shall notify any health care provider or health service plans with which the minor has  
16 been involved through the caregiver.

17 **§49-2-705. Good faith reliance on affidavit; applicability.**

18 (a) Any person who relies in good faith on the affidavit of caregiver consent for a minor’s  
19 health care:

20 (1) Has no obligation to conduct any further inquiry or investigation; and

21 (2) Is not subject to civil or criminal liability or to professional disciplinary action because  
22 of the reliance.

1 (b) Subsection (a) of this section applies even if medical treatment is provided to a minor in  
2 contravention of a decision of a parent, legal custodian or guardian of the minor who signed the  
3 affidavit if the person providing care has no actual knowledge of the decision of the parent, legal  
4 custodian or guardian.

5 **§49-2-706. Exceptions to applicability.**

6 The consent authorized by this section is not applicable for purposes of the Individuals with  
7 Disabilities Education Act, 20 U.S.C. §1400 *et seq.*, or Section 504 of the Rehabilitation Act of  
8 1973, 29 U.S.C. §701.

9 **§49-2-707. Penalty for false statement.**

10 A person who knowingly makes a false statement in an affidavit under this article is guilty  
11 of a misdemeanor and, upon conviction, shall be fined not more than \$1,000.

12 **§49-2-708. Rule-making authority.**

13 The Secretary of the Department of Health and Human Resources is authorized to propose  
14 rules necessary to implement this article for legislative approval in accordance with article three,  
15 chapter twenty-nine-a of this code.

16 PART VIII. REPORTS OF CHILDREN SUSPECTED OF ABUSE.

17 **§49-2-801. Purpose.**

18 It is the purpose of this article through the complete reporting of child abuse and neglect:

- 19 (1) To protect the best interests of the child;
- 20 (2) To offer protective services in order to prevent any further harm to the child or any other  
21 children living in the home;
- 22 (3) To stabilize the home environment, to preserve family life whenever possible;

1 (4) To promote adult responsibility for protecting children; and

2 (5) To encourage cooperation among the states to prevent future incidents of child abuse and  
3 neglect and in dealing with the problems of child abuse and neglect.

4 **§49-2-802. Establishment of child protective services; general duties and powers;**  
5 **administrative procedure; immunity from civil liability; cooperation of other**  
6 **state agencies.**

7 (a) The department shall establish or designate in every county a local child protective  
8 services office to perform the duties and functions set forth in this article.

9 (b) The local child protective services office shall investigate all reports of child abuse or  
10 neglect. Under no circumstances may investigating personnel be relatives of the accused, the child  
11 or the families involved. In accordance with the local plan for child protective services, it shall  
12 provide protective services to prevent further abuse or neglect of children and provide for or arrange  
13 for and coordinate and monitor the provision of those services necessary to ensure the safety of  
14 children. The local child protective services office shall be organized to maximize the continuity  
15 of responsibility, care and service of individual workers for individual children and families. Under  
16 no circumstances may the secretary or his or her designee promulgate rules or establish any policy  
17 which restricts the scope or types of alleged abuse or neglect of minor children which are to be  
18 investigated or the provision of appropriate and available services.

19 (c) Each local child protective services office shall:

20 (1) Receive or arrange for the receipt of all reports of children known or suspected to be  
21 abused or neglected on a twenty-four hour, seven-day-a-week basis and cross-file all reports under  
22 the names of the children, the family and any person substantiated as being an abuser or neglecter



1 by investigation of the Department of Health and Human Resources, with use of cross-filing of the  
2 person's name limited to the internal use of the department;

3 (2) Provide or arrange for emergency children's services to be available at all times;

4 (3) Upon notification of suspected child abuse or neglect, commence or cause to be  
5 commenced a thorough investigation of the report and the child's environment. As a part of this  
6 response, within fourteen days there shall be a face-to-face interview with the child or children and  
7 the development of a protection plan, if necessary for the safety or health of the child, which may  
8 involve law-enforcement officers or the court;

9 (4) Respond immediately to all allegations of imminent danger to the physical well-being of  
10 the child or of serious physical abuse. As a part of this response, within seventy-two hours there  
11 shall be a face-to-face interview with the child or children and the development of a protection plan,  
12 which may involve law-enforcement officers or the court; and

13 (5) In addition to any other requirements imposed by this section, when any matter regarding  
14 child custody is pending, the circuit court or family court may refer allegations of child abuse and  
15 neglect to the local child protective services office for investigation of the allegations as defined by  
16 this chapter and require the local child protective services office to submit a written report of the  
17 investigation to the referring circuit court or family court within the time frames set forth by the  
18 circuit court or family court.

19 (d) In those cases in which the local child protective services office determines that the best  
20 interests of the child require court action, the local child protective services office shall initiate the  
21 appropriate legal proceeding.

22 (e) The local child protective services office shall be responsible for providing, directing or

1 coordinating the appropriate and timely delivery of services to any child suspected or known to be  
2 abused or neglected, including services to the child's family and those responsible for the child's care.

3 (f) To carry out the purposes of this article, all departments, boards, bureaus and other  
4 agencies of the state or any of its political subdivisions and all agencies providing services under the  
5 local child protective services plan shall, upon request, provide to the local child protective services  
6 office any assistance and information as will enable it to fulfill its responsibilities.

7 (g)(1) In order to obtain information regarding the location of a child who is the subject of  
8 an allegation of abuse or neglect, the Secretary of the Department of Health and Human Resources  
9 may serve, by certified mail or personal service, an administrative subpoena on any corporation,  
10 partnership, business or organization for the production of information leading to determining the  
11 location of the child.

12 (2) In case of disobedience to the subpoena, in compelling the production of documents, the  
13 secretary may invoke the aid of:

14 (A) The circuit court with jurisdiction over the served party if the person served is a resident;  
15 or

16 (B) The circuit court of the county in which the local child protective services office  
17 conducting the investigation is located if the person served is a nonresident.

18 (3) A circuit court shall not enforce an administrative subpoena unless it finds that:

19 (A) The investigation is one the Division of Child Protective Services is authorized to make  
20 and is being conducted pursuant to a legitimate purpose;

21 (B) The inquiry is relevant to that purpose;

22 (C) The inquiry is not too broad or indefinite;

1 (D) The information sought is not already in the possession of the Division of Child  
2 Protective Services; and

3 (E) Any administrative steps required by law have been followed.

4 (4) If circumstances arise where the secretary, or his or her designee, determines it necessary  
5 to compel an individual to provide information regarding the location of a child who is the subject  
6 of an allegation of abuse or neglect, the secretary, or his or her designee, may seek a subpoena from  
7 the circuit court with jurisdiction over the individual from whom the information is sought.

8 (h) No child protective services caseworker may be held personally liable for any professional  
9 decision or action taken pursuant to that decision in the performance of his or her official duties as  
10 set forth in this section or agency rules promulgated thereupon. However, nothing in this subsection  
11 protects any child protective services worker from any liability arising from the operation of a motor  
12 vehicle or for any loss caused by gross negligence, willful and wanton misconduct or intentional  
13 misconduct.

14 **§49-2-803. Persons mandated to report suspected abuse and neglect; requirements.**

15 (a) Any medical, dental or mental health professional, Christian Science practitioner,  
16 religious healer, school teacher or other school personnel, social service worker, child care or foster  
17 care worker, emergency medical services personnel, peace officer or law-enforcement official,  
18 humane officer, member of the clergy, circuit court judge, family court judge, employee of the  
19 Division of Juvenile Services, magistrate, youth camp administrator or counselor, employee, coach  
20 or volunteer of an entity that provides organized activities for children, or commercial film or  
21 photographic print processor who has reasonable cause to suspect that a child is neglected or abused  
22 or observes the child being subjected to conditions that are likely to result in abuse or neglect shall

1 immediately, and not more than forty-eight hours after suspecting this abuse or neglect, report the  
2 circumstances or cause a report to be made to the Department of Health and Human Resources. In  
3 any case where the reporter believes that the child suffered serious physical abuse or sexual abuse  
4 or sexual assault, the reporter shall also immediately report, or cause a report to be made, to the State  
5 Police and any law-enforcement agency having jurisdiction to investigate the complaint. Any person  
6 required to report under this article who is a member of the staff or volunteer of a public or private  
7 institution, school, entity that provides organized activities for children, facility or agency shall also  
8 immediately notify the person in charge of the institution, school, entity that provides organized  
9 activities for children, facility or agency, or a designated agent thereof, who may supplement the  
10 report or cause an additional report to be made.

11 (b) Any person over the age of eighteen who receives a disclosure from a credible witness  
12 or observes any sexual abuse or sexual assault of a child, shall immediately, and not more than  
13 forty-eight hours after receiving that disclosure or observing the sexual abuse or sexual assault,  
14 report the circumstances or cause a report to be made to the Department of Health and Human  
15 Resources or the State Police or other law-enforcement agency having jurisdiction to investigate the  
16 report. In the event that the individual receiving the disclosure or observing the sexual abuse or  
17 sexual assault has a good faith belief that the reporting of the event to the police would expose either  
18 the reporter, the subject child, the reporter's children or other children in the subject child's  
19 household to an increased threat of serious bodily injury, the individual may delay making the report  
20 while he or she undertakes measures to remove themselves or the affected children from the  
21 perceived threat of additional harm and the individual makes the report as soon as practicable after  
22 the threat of harm has been reduced. The law-enforcement agency that receives a report under this

1 subsection shall report the allegations to the Department of Health and Human Resources and  
2 coordinate with any other law-enforcement agency, as necessary to investigate the report.

3 (c) Nothing in this article is intended to prevent individuals from reporting suspected abuse  
4 or neglect on their own behalf. In addition to those persons and officials specifically required to  
5 report situations involving suspected abuse or neglect of children, any other person may make a  
6 report if that person has reasonable cause to suspect that a child has been abused or neglected in a  
7 home or institution or observes the child being subjected to conditions or circumstances that would  
8 reasonably result in abuse or neglect.

9 **§49-2-804. Notification of disposition of reports.**

10 The Department of Health and Human Resources shall continue to develop, update and  
11 implement a procedure to notify any person mandated to report suspected child abuse and neglect  
12 pursuant to section eight hundred three of this article, of whether an investigation into the reported  
13 suspected abuse or neglect has been initiated and when the investigation is completed.

14 **§49-2-805. Educational programs; requirements.**

15 Subject to appropriation in the budget, the department shall conduct educational and training  
16 programs for persons required to report suspected abuse or neglect, and the general public, as well  
17 as implement evidence-based programs that reduce incidents of child maltreatment including sexual  
18 abuse. Training for persons require to report and the general public shall include:

- 19 (1) Indicators of child abuse and neglect;
- 20 (2) Tactics used by sexual abusers;
- 21 (3) How and when to make a report; and
- 22 (4) Protective factors that prevent abuse and neglect in order to promote adult responsibility

1 for protecting children, encourage maximum reporting of child abuse and neglect, and to improve  
2 communication, cooperation and coordination among all agencies involved in the identification,  
3 prevention and treatment of the abuse and neglect of children.

4 **§49-2-806. Mandatory reporting of suspected animal cruelty by child protective service**  
5 **workers.**

6 In the event a child protective service worker, in response to a report mandated by section  
7 eight hundred two and eight hundred three of this article, forms a reasonable suspicion that an animal  
8 is the victim of cruel or inhumane treatment, he or she shall report the suspicion and the basis  
9 therefor to the county humane officer provided under section one, article ten, chapter seven of this  
10 code within twenty-four hours of the response to the report.

11 **§49-2-807. Mandatory reporting to medical examiner or coroner; postmortem investigation.**

12 Any person or official who is required pursuant to section eight hundred three of this article  
13 to report cases of suspected child abuse or neglect and who has reasonable cause to suspect that a  
14 child has died as a result of child abuse or neglect, shall report that fact to the appropriate medical  
15 examiner or coroner. Upon the receipt of that report, the medical examiner or coroner shall cause  
16 an investigation to be made and report his or her findings to the police, the appropriate prosecuting  
17 attorney, the local child protective service agency and, if the institution making a report is a hospital,  
18 to the hospital.

19 **§49-2-808. Photographs and X rays.**

20 Any person required to report cases of children suspected of being abused and neglected may  
21 take or cause to be taken, at public expense, photographs of the areas of trauma visible on a child  
22 and, if medically indicated, cause to be performed radiological examinations of the child. Any

1 photographs or X rays taken shall be sent to the appropriate child protective service as soon as  
2 possible.

3 **§49-2-809. Reporting procedures.**

4 (a) Reports of child abuse and neglect pursuant to this article shall be made immediately by  
5 telephone to the local department child protective service agency and shall be followed by a written  
6 report within forty-eight hours if so requested by the receiving agency. The state department shall  
7 establish and maintain a twenty-four hour, seven-day-a-week telephone number to receive those calls  
8 reporting suspected or known child abuse or neglect.

9 (b) A copy of any report of serious physical abuse, sexual abuse or assault shall be forwarded  
10 by the department to the appropriate law-enforcement agency, the prosecuting attorney or the coroner  
11 or medical examiner's office. All reports under this article are confidential. Reports of known or  
12 suspected institutional child abuse or neglect shall be made and received as all other reports made  
13 pursuant to this article.

14 **§49-2-810. Immunity from liability.**

15 Any person, official or institution participating in good faith in any act permitted or required  
16 by this article are immune from any civil or criminal liability that otherwise might result by reason  
17 of those actions.

18 **§49-2-811. Abrogation of privileged communications; exception.**

19 The privileged quality of communications between husband and wife and between any  
20 professional person and his or her patient or his or her client, except that between attorney and client,  
21 is hereby abrogated in situations involving suspected or known child abuse or neglect.

22 **§49-2-812. Failure to report; penalty.**

1 Any person, official or institution required by this article to report a case involving a child  
2 known or suspected to be abused or neglected, or required by section eight hundred nine of this  
3 article to forward a copy of a report of serious injury, who knowingly fails to do so or knowingly  
4 prevents another person acting reasonably from doing so, is guilty of a misdemeanor and, upon  
5 conviction, shall be confined in jail not more than thirty days or fined not more than \$1,000, or both  
6 fined and confined.

7 **§49-2-813. Statistical index; reports.**

8 The Department of Health and Human Resources shall maintain a statewide child abuse and  
9 neglect statistical index of all substantiated allegations of child abuse or neglect cases to include  
10 information contained in the reports required under this article and any other information considered  
11 appropriate by the Secretary of the Department of Health and Human Resources. Nothing in the  
12 statistical data index maintained by the Department of Health and Human Resources may contain  
13 information of a specific nature that would identify individual cases or persons. Notwithstanding  
14 section two hundred one, article four of this chapter, the Department of Health and Human  
15 Resources shall provide copies of the statistical data maintained pursuant to this subsection to the  
16 State Police child abuse and neglect investigations unit to carry out its responsibilities to protect  
17 children from abuse and neglect.

18 PART IX. GENERAL AUTHORITY AND DUTIES  
19 OF THE DIVISION OF JUVENILE SERVICES.

20 **§49-2-901. Policy; cooperation.**

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

22 (1) Provide a coordinated continuum of care for its children who have been charged with an



1 offense which would be a crime if committed by an adult, whether they are taken into custody and  
2 securely detained or released pending adjudication by the court; and

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

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

11 **§49-2-902. Division of Juvenile Services; transfer of functions; juvenile placement.**

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

17 (b) The Division of Juvenile Services consists, at a minimum, of three subdivisions:

18 (1) The Office of Juvenile Detention, which is responsible for operating and maintaining  
19 centers for the predispositional detention of juveniles, including juveniles who have been transferred  
20 to adult criminal jurisdiction pursuant to part eight, article four of this chapter and juveniles who are  
21 awaiting transfer to a juvenile corrections facility;

22 (2) The Office of Juvenile Corrections, which is also responsible for operating and

1 maintaining juvenile corrections facilities; and

2 (3) The Office of Community-Based Services, shall provide at a minimum, masters level  
3 therapy services; family, individual and group counseling; community service activities;  
4 transportation; and aftercare programs.

5 (c) Notwithstanding any provisions of this code to the contrary, whenever a juvenile is  
6 ordered into the custody of the Division of Juvenile Services, the director may place the juvenile  
7 while he or she is in the division's custody at whichever facility operated by the division is deemed  
8 by the director to be most appropriate considering the juvenile's well-being and any  
9 recommendations of the court placing the juvenile in the division's custody.

10 **§49-2-903. Powers and duties; comprehensive strategy; cooperation.**

11 The Division of Juvenile Services has the following duties as to juveniles in detention  
12 facilities or juvenile corrections facilities:

13 (1) Cooperating with the United States Department of Justice in operating, maintaining and  
14 improving juvenile correction facilities and predispositional detention centers, complying with  
15 regulations thereof, and receiving and expending federal funds for the services;

16 (2) Providing care for children needing secure detention pending disposition by a court  
17 having juvenile jurisdiction or temporary care following a court action;

18 (3) Assigning the necessary personnel and providing adequate space for the support and  
19 operation of any facility providing for the secure detention of children committed to the care of the  
20 Division of Juvenile Services;

21 (4) Proposing rules which outline policies and procedures governing the operation of  
22 correctional, detention and other facilities in its division wherein juveniles may be securely housed;

1 (5) Assigning the necessary personnel and providing adequate space for the support and  
2 operation of its facilities;

3 (6) Developing a comprehensive plan to maintain and improve a unified state system of  
4 regional predispositional detention centers for juveniles;

5 (7) Working in cooperation with the Department of Health and Human Resources in  
6 establishing, maintaining, and continuously refining and developing a balanced and comprehensive  
7 state program for children who have been adjudicated delinquent;

8 (8) In cooperation with the Department of Health and Human Resources establishing  
9 programs and services within available funds, designed to:

10 (A) Prevent juvenile delinquency;

11 (B) To divert juveniles from the juvenile justice system:

12 (C) To provide community-based alternatives to juvenile detention and correctional facilities;

13 and

14 (D) To encourage a diversity of alternatives within the juvenile justice system;

15 Working in collaboration with the Department of Health and Human Resources, the Division  
16 of Juvenile Services shall employ a comprehensive strategy for the social and rehabilitative  
17 programming and treatment of juveniles, consistent with the principles adopted by the Office of  
18 Juvenile Justice and Delinquency Prevention of the Office of Justice Programs of the United States  
19 Department of Justice.

20 **§49-2-904. Rules for specialized training for juvenile corrections officers and detention center**  
21 **employees.**

22 The Division of Juvenile Services shall propose rules for Legislative approval pursuant to

1 chapter twenty-nine-a of this code, which require juvenile corrections officers and detention center  
2 employees to complete specialized training and certification. The training programs shall meet the  
3 standards of those offered or endorsed by the Office of Juvenile Justice and Delinquency Prevention  
4 of the Office of Justice Programs of the United States Department of Justice.

5 **§49-2-905. Juvenile detention and corrections facility personnel.**

6 (a) All persons employed at a juvenile detention or corrections facility shall be employed at  
7 a salary and with benefits consistent with the approved plan of compensation of the Division of  
8 Personnel, created under section five, article six, chapter twenty-nine of this code; all employees will  
9 also be covered by the policies and procedures of the West Virginia Public Employees Grievance  
10 Board, created under article two, chapter six-c of this code and the classified service protection  
11 policies of the Division of Personnel.

12 (b) The Division of Juvenile Services of the Department of Military Affairs and Public Safety  
13 is authorized to assign the necessary personnel and provide adequate space for the support and  
14 operation of any facility operated by the Division of Juvenile Services of the Department of Military  
15 Affairs and Public Safety providing for the detention of children as provided in this article, subject  
16 to and not inconsistent with the appropriation and availability of funds.

17 **§49-2-906. Medical and other treatment of juveniles in custody of the division; consent;  
18 service providers; medical care; pregnant inmates; claims processing and  
19 administration by the department; authorization of cooperative agreements.**

20 (a) Notwithstanding any other provision of law to the contrary, the director, or his or her  
21 designee, is hereby authorized to consent to the medical or other treatment of any juvenile in the  
22 legal or physical custody of the director or the division.

1 (b) In providing or arranging for the necessary medical and other care and treatment of  
2 juveniles committed to the division's custody, the director shall use service providers who provide  
3 the same or similar services to juveniles under existing contracts with the Department of Health and  
4 Human Resources. In order to obtain the most advantageous reimbursement rates, to capitalize on  
5 an economy of scale and to avoid duplicative systems and procedures, the department shall  
6 administer and process all claims for medical or other treatment of juveniles committed to the  
7 division's custody.

8 (c) In providing or arranging for the necessary medical and other care and treatment of  
9 juveniles committed to the division's custody, the director shall assure that pregnant inmates will not  
10 be restrained after reaching the second trimester of pregnancy until the end of the pregnancy.  
11 However, if the inmate, based upon her classification, discipline history or other factors deemed  
12 relevant by the director poses a threat of escape, or to the safety of herself, the public, staff, or the  
13 unborn fetus, the inmate may be restrained in a manner reasonably necessary. Additionally, that  
14 prior to directing the application of restraints and where there is no threat to the safety of the inmate,  
15 the public, staff or the fetus, the director or designee shall consult with an appropriate health care  
16 professional to assure that the manner of restraint will not pose an unreasonable risk of harm to the  
17 inmate or the fetus.

18 (d) For purposes of implementing the mandates of this section, the director is hereby  
19 authorized and directed to enter into any necessary agreements with the Department of Health and  
20 Human Resources. An agreement will include, at a minimum, for the direct and incidental costs  
21 associated with that care and treatment to be paid by the Division of Juvenile Services.

22 **§49-2-907. Examination, diagnosis, classification and treatment; period of custody.**

1 (a) As a part of the dispositional proceeding for a juvenile who has been adjudicated  
2 delinquent, the court may, upon its own motion or upon request of counsel, order the juvenile to be  
3 delivered into the custody of the Director of the Division of Juvenile Services, who shall cause the  
4 juvenile to be transferred to a juvenile diagnostic center for a period not to exceed sixty days. During  
5 this period, the juvenile will undergo examination, diagnosis, classification and a complete medical  
6 examination and shall at all times be kept apart from the general juvenile population in the director's  
7 custody.

8 (b) During the examination period established by subsection (a) of this section, the director,  
9 or his or her designee, shall convene and direct a multidisciplinary treatment team for the juvenile  
10 which team will include the juvenile, if appropriate, the juvenile's probation officer, the juvenile's  
11 social worker, if any, the juvenile's custodial parent or parents, the juvenile's guardian, attorneys  
12 representing the juvenile or the parents, the guardian ad litem, if any, the prosecuting attorney and  
13 an appropriate school official or representative. The team may also include, where appropriate, a  
14 court-appointed special advocate, a member of a child advocacy center and any other person who  
15 may assist in providing recommendations for the particular needs of the juvenile and the family.

16 (c) Not later than sixty days after commitment pursuant to this section the juvenile shall be  
17 remanded and delivered to the custody of the director, an appropriate agency or any other person that  
18 the court by its order directs. Within ten days after the end of the examination, diagnosis and  
19 classification, the Director of the Division of Juvenile Services shall make or cause to be made a  
20 report to the court containing the results, findings, conclusions and recommendations of the  
21 multidisciplinary team with respect to that juvenile.

22 **§49-2-908. Educational services for juveniles placed in predispositional and postdispositional**

1                   **facilities; authorization; cooperation; rule-making.**

2           (a) The State Board of Education is authorized to provide for adequate and appropriate  
3 education opportunities for juveniles placed in secure predispositional or post dispositional centers  
4 operated by or under contract with the Division of Juvenile Services.

5           (b) Subject to appropriations by the Legislature, the state board is authorized:

6           (1) To provide education programs and services for juveniles on the grounds of secure  
7 predispositional or postdispositional centers;

8           (2) To hire classroom teachers and other school personnel necessary to provide adequate and  
9 appropriate education opportunities to these juveniles, and

10          (3) To provide education services for the detained juveniles on a twelve-month basis.

11          (c) The Division of Juvenile Services shall cooperate with the state board and the state  
12 superintendent in the establishment and maintenance of education programs authorized under this  
13 section. Subject to appropriations by the Legislature, the Division of Juvenile Services shall provide,  
14 or cause to be provided, adequate space and facilities for the education programs. The state board  
15 may not be required to construct, improve or maintain any building, other improvement to real estate  
16 or fixtures attached thereto at any secure predispositional detention center for the purpose of  
17 establishing and maintaining an education program.

18          (d) The state board may develop and approve rules in accordance with article three-a, chapter  
19 twenty-nine-a of this code for the education of juveniles in secure predispositional detention centers.

20 **§49-2-909. Arrest authority of juvenile correctional and detention officers.**

21          (a) Persons employed by the Division of Juvenile Services as juvenile correctional officers  
22 are authorized and empowered to arrest persons already in the custody of the Division of Juvenile

1 Services for violations of law that occur in the officer's presence, including escape.

2 (b) Nothing in this section may be construed as to make a juvenile correctional officer  
3 employed by the Division of Juvenile Services a law-enforcement officer as defined in section one,  
4 article twenty-nine, chapter thirty of this code.

5 **§49-2-910. Juvenile trustee accounts and funds, earnings and personal property of juveniles;**  
6 **return of property; reports;**

7 (a) The Director of Juvenile Services may establish at each facility under his or her  
8 jurisdiction a "Juvenile Trustee Fund". The administrator or designee of each facility may receive  
9 and take charge of the money and personal property, as defined by policy, of all juveniles in his or  
10 her facility and all money or personal property, as defined by policy, sent to the juveniles or earned  
11 by the juveniles as compensation for work performed while they are domiciled there. The  
12 administrator or designee shall credit the money and earnings to the juveniles entitled to it and shall  
13 keep an accurate account of all the money and personal property so received, which account is  
14 subject to examination by the Director of Juvenile Services and the Assistant Director of Budget and  
15 Finance of the Division of Juvenile Services. The administrator or designee shall deposit the moneys  
16 in one or more responsible banks in accounts to be designated a "Juvenile Trustee Fund".

17 (b) The administrator or designee shall keep in an account for all juveniles at least ten percent  
18 of all money earned during the juveniles commitment and pay the money to the juvenile at the time  
19 of the juvenile's release. The administrator or designee may authorize the juvenile to withdraw  
20 money from his or her mandatory savings for the purpose of preparing the juvenile for reentry into  
21 society.

22 (c) The administrator or designee shall deliver to the juvenile at the time he or she leaves the



1 facility, or as soon as practicable after departure, all personal property, moneys and earnings then  
2 credited to the juvenile, or in case of the death of the juvenile before authorized release from the  
3 facility, the administrator or designee shall deliver the property to the juvenile's personal  
4 representative. If a conservator is appointed for the juvenile while he or she is domiciled at the  
5 facility, the administrator or designee shall deliver to the conservator, upon proper demand, all  
6 moneys and personal property belonging to the juvenile that are in the custody of the administrator.

7 (d) If any money is credited to a former juvenile resident after remittance of the sum of  
8 money as provided in subsection (c) of this section, the administrator or designee shall mail the funds  
9 to the former juvenile resident's last known address. If the funds are returned to the facility, the  
10 administrator or designee will forward those funds to the Division of Juvenile Service's Assistant  
11 Director of Budget and Finance to submit the funds to the State Treasurer's Office-Unclaimed  
12 Property Division.

13 (e) The facility shall compile a monthly report that specifically documents juvenile trustee  
14 fund receipts and expenditures and submit the reconciled monthly bank statements to the Division  
15 of Juvenile Service's Assistant Director of Budget and Finance.

16 **§49-2-911. Juvenile benefit funds; uses; reports.**

17 (a) There is hereby established a special revenue account in the State Treasury for each  
18 juvenile benefit fund established by the director. Moneys received by an institution for deposit in an  
19 juvenile benefit fund shall be deposited with the State Treasurer to be credited to the special revenue  
20 account created for the institution's juvenile benefit fund. Moneys in a special revenue account  
21 established for a juvenile benefit fund may be expended by the institution for the purposes set forth  
22 in this section.

1 (b) Moneys in an account established for a juvenile benefit fund may be expended by the  
2 facility for the purposes set forth in this section. Moneys to be deposited into a juvenile benefit fund  
3 consist of:

4 (1) All profit from the exchange or commissary operation and, if the commissary is operated  
5 by a vendor, whether a public or private entity, the profit is the negotiated commission paid to the  
6 Division of Juvenile Services by the vendor;

7 (2) All net proceeds from vending machines used for juvenile resident visitation;

8 (3) All proceeds from contracted juvenile resident telephone commissions;

9 (4) Any funds that may be assigned by juveniles or donated to the facility by the general  
10 public or a service organization on behalf of all the juveniles; and

11 (5) Any funds confiscated considered contraband.

12 (c) The juvenile benefit fund may only be used for the following purposes at juvenile  
13 facilities:

14 (1) Open-house visitation functions or other nonroutine campus-wide activities which will  
15 enhance programming goals of the facility;

16 (2) Holiday functions which may include decorations, food and gifts for residents or family  
17 of residents;

18 (3) Rental of videos;

19 (4) Payment of video license;

20 (5) Supplemental supplies and equipment which will enrich the facilities' program activities;

21 (6) Hardship needs for juvenile residents if approved by the Division of Juvenile Services  
22 Director; and

1 (7) Any special activities or rewards for residents.

2 (d) The facility shall compile a monthly report that specifically documents juvenile benefit  
3 fund receipts and expenditures and submit the reconciled monthly bank statements to the Division  
4 of Juvenile Services Assistant Director of Budget and Finance.

5 PART X. WEST VIRGINIA

6 JUVENILE OFFENDER REHABILITATION ACT.

7 **§49-2-1001. Purpose; intent.**

8 It is the intent of the Legislature to provide for the creation of all reasonable means and  
9 methods that can be established by a humane and enlightened state, solicitous of the welfare of its  
10 children, for the prevention of delinquency and for the care and rehabilitation of juvenile delinquents  
11 and status offenders. It is further the intent of the Legislature that this state, through the Department  
12 of Health and Human Resources and the Division of Juvenile Services, establish, maintain, and  
13 continuously refine and develop, a balanced and comprehensive state program for juveniles who are  
14 potentially delinquent or are status offenders or juvenile delinquents in the care or custody of the  
15 department.

16 **§49-2-1002. Responsibilities of the Department of Health and Human Resources and Division**  
17 **of Juvenile Services of the Department of Military Affairs and Public Safety;**  
18 **programs and services; rehabilitation; cooperative agreements.**

19 (a) The Department of Health and Human Resources and the Division of Juvenile Services  
20 of the Department of Military Affairs and Public Safety shall establish programs and services  
21 designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to  
22 provide community-based alternatives to juvenile detention and correctional facilities and to

1 encourage a diversity of alternatives within the child welfare and juvenile justice system. The  
2 development, maintenance and expansion of programs and services may include, but not be limited  
3 to, the following:

4 (1) Community-based programs and services for the prevention and treatment of juvenile  
5 delinquency through the development of foster-care and shelter-care homes, group homes, halfway  
6 houses, homemaker and home health services, twenty-four hour intake screening, volunteer and  
7 crisis home programs, day treatment and any other designated community-based diagnostic,  
8 treatment or rehabilitative service;

9 (2) Community-based programs and services to work with parents and other family members  
10 to maintain and strengthen the family unit so that the juvenile may be retained in his or her home;

11 (3) Youth service bureaus and other community-based programs to divert youth from the  
12 juvenile court or to support, counsel, or provide work and recreational opportunities for status  
13 offenders, juvenile delinquents and other youth to help prevent delinquency;

14 (4) Projects designed to develop and implement programs stressing advocacy activities aimed  
15 at improving services for and protecting rights of youth affected by the juvenile justice system;

16 (5) Educational programs or supportive services designed to encourage status offenders,  
17 juvenile delinquents, and other youth to remain in elementary and secondary schools or in alternative  
18 learning situations;

19 (6) Expanded use of professional and paraprofessional personnel and volunteers to work  
20 effectively with youth;

21 (7) Youth initiated programs and outreach programs designed to assist youth who otherwise  
22 would not be reached by traditional youth assistance programs;

1 (8) A statewide program designed to reduce the number of commitments of juveniles to any  
2 form of juvenile facility as a percentage of the state juvenile population; to increase the use of  
3 nonsecure community-based facilities as a percentage of total commitments to juvenile facilities; and  
4 to discourage the use of secure incarceration and detention; and

5 (9) Transitional programs designed to assist youth who are in the custody of the state upon  
6 reaching the age of eighteen years.

7 (b)(1) The Department of Health and Human Resources shall establish an individualized  
8 program of rehabilitation for each status offender referred to the department and to each alleged  
9 juvenile delinquent referred to the department after being allowed a preadjudicatory community  
10 supervision period by the juvenile court, and for each adjudicated juvenile delinquent who, after  
11 adjudication, is referred to the department for investigation or treatment or whose custody is vested  
12 in the department.

13 (2) Individualized program of rehabilitation shall take into account the programs and services  
14 to be provided by other public or private agencies or personnel which are available in the community  
15 to deal with the circumstances of the particular juvenile.

16 (3) For alleged juvenile delinquents and status offenders, those individualized program of  
17 rehabilitation shall be furnished to the juvenile court and made available to counsel for the juvenile;  
18 it may be modified from time to time at the direction of the department or by order of the juvenile  
19 court.

20 (4) The department may develop an individualized program of rehabilitation for any juvenile  
21 referred for noncustodial counseling pursuant to section seven hundred two, article four of this  
22 chapter, or for any other juvenile upon the request of a public or private agency.

1 (c) The Department of Health and Human Resources and the Division of Juvenile Services  
2 are directed to enter into cooperative arrangements and agreements with each other and with private  
3 agencies or with agencies of the state and its political subdivisions to fulfill their respective duties  
4 under this article and chapter.

5 **§49-2-1003. Rehabilitative facilities for status offenders; requirements; educational**  
6 **instruction.**

7 (a) The Department of Health and Human Resources shall establish and maintain one or more  
8 rehabilitative facilities to be used exclusively for the lawful custody of status offenders. Each facility  
9 will be a nonsecure facility having as its purpose the rehabilitation of status offenders. The facility  
10 will have a bed capacity for not more than twenty juveniles, and shall minimize the institutional  
11 atmosphere and prepare the juvenile for reintegration into the community.

12 (b) Rehabilitative programs and services shall be provided by or through each facility and  
13 may include, but not be limited to, medical, educational, vocational, social and psychological  
14 guidance, training, counseling, alcoholism treatment, drug treatment and other rehabilitative services.  
15 The Department of Health and Human Resources shall provide to each status offender committed  
16 to the facility a program of treatment and services consistent with the individualized program of  
17 rehabilitation developed for the juvenile. In the case of any other juvenile residing at the facility, the  
18 department shall provide those programs and services as may be proper in the circumstances  
19 including, but not limited to, any programs or services directed to be provided by the court.

20 (c) The board of education of the county in which the facility is located shall provide  
21 instruction for juveniles residing at the facility. Residents who can be permitted to do so shall attend  
22 local schools, and instruction shall otherwise take place at the facility.

1 (d) Facilities established pursuant to this section will be structured as community-based  
2 facilities.

3 **§49-2-1004. The Juvenile Services Reimbursement Offender Fund; use; expenditures.**

4 There is created within the State Treasury a special revenue account designated “The Juvenile  
5 Services Reimbursement Offender Fund” within and for the benefit of the Division of Juvenile  
6 Services for expenses incurred in servicing juvenile status offenders in need of stabilization and  
7 specialized supervision due to chronic runaway behavior. Moneys shall be paid into the account by  
8 the Department of Health and Human Resources, based upon an established per diem rate, or other  
9 funding sources. The Department of Health and Human Resources and the Division of Juvenile  
10 Services shall jointly establish the per diem rate to be paid into the fund by the Department of Health  
11 and Human Resources for each juvenile status offender in need of stabilization and specialized  
12 supervision due to chronic runaway behavior by the Division of Juvenile Services pursuant to this  
13 article and by cooperative agreement. The Director of Juvenile Services is authorized to make  
14 expenditures from the fund in accordance with article three, chapter twelve of this code to offset  
15 expenses incurred by the Division of Juvenile Services in housing, treatment and caring for juvenile  
16 status offenders.

17 **§49-2-1005. Legal custody; law-enforcement agencies.**

18 The Department of Health and Human Resources may require any juvenile committed to its  
19 legal custody to remain at and to return to the residence to which the juvenile is assigned by the  
20 department or by the juvenile court. In aid of that authority, and upon request of a designated  
21 employee of the department, any police officer, sheriff, deputy sheriff, or juvenile court probation  
22 officer is authorized to take the juvenile into custody and return the juvenile to his or her place of

1 residence or into the custody of a designated employee of the department.

2 **§49-2-1006. Reporting requirements; cataloguing of services.**

3 (a) The Department of Health and Human Resources and the Division of Juvenile Services  
4 shall annually review its programs and services and submit a report by December 31, of each year  
5 to the Governor, the Legislature and the Supreme Court of Appeals. This report shall analyze and  
6 evaluate the effectiveness of the programs and services being carried out by the Department of  
7 Health and Human Resources or the Division of Juvenile Services. That report shall include, but is  
8 not limited to:

9 (1) An analysis and evaluation of programs and services continued, established and  
10 discontinued during the period covered by the report;

11 (2) A description of programs and services which should be implemented to further the  
12 purposes of this article;

13 (3) Relevant information concerning the number of juveniles comprising the population of  
14 any rehabilitative facility during the period covered by the report;

15 (4) The length of residence, the nature of the problems of each juvenile, the juvenile's  
16 response to programs and services; and

17 (5) Any other information as will enable a user of the report to ascertain the effectiveness of  
18 the facility as a rehabilitative facility.

19 (b) The Department of Health and Human Resources and the Division of Juvenile Services  
20 shall prepare a descriptive catalogue of its juvenile programs and services available in local  
21 communities throughout this state and shall distribute copies of the same to every juvenile court in  
22 the state and, at the direction of the juvenile court, the catalogue shall be distributed to attorneys



1 practicing before the court. The catalogue shall:

2 (1) Be made available to members of the general public upon request:

3 (2) Contain sufficient information as to particular programs and services so as to enable a  
4 user of the catalogue to make inquiries and referrals; and

5 (3) Be constructed so as to meaningfully identify and describe programs and services.

6 (c) The requirements of this section are not satisfied by a simple listing of specific agencies  
7 or the individuals in charge of programs at a given time. The catalogue shall be updated and  
8 republished or supplemented from time to time as may be required to maintain its usefulness as a  
9 resource manual.

### 10 **ARTICLE 3. SPECIALIZED ADVOCACY PROGRAMS.**

#### 11 **§49-3-101. Child advocacy centers; services; requirements.**

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

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

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

17 (3) Operate a legal entity responsible for program and fiscal operations that has established  
18 and implemented basic sound administrative practices.

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

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

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

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

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

12 (9) Conducting team discussions and providing information sharing regarding the  
13 investigation, case status and services needed by the child and family are to occur on a routine basis.

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

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

19 **§49-3-102. Court appointed special advocate; operations.**

20 A court appointed special advocate (CASA) shall operate as follows:

21 (1) Standards: CASA programs shall be members in good standing with the West Virginia  
22 Court Appointed Special Advocate Association, Inc., and the National Court Appointed Special

1 Advocates Association and adhere to all standards set forth by these entities.

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

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

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

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

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

#### 14 **ARTICLE 4. COURT ACTIONS.**

##### 15 **PART I. GENERAL PROVISIONS.**

##### 16 **§49-4-101. Exercise of powers and jurisdiction by judge in vacation.**

17 The powers and jurisdiction of the court, under the provisions of this chapter, may be  
18 exercised by the judge in vacation.

##### 19 **§49-4-102. Procedure for appealing decisions.**

20 Cases under this chapter, if tried in any inferior court, may be reviewed by writ of error or  
21 appeal to the circuit court, and if tried or reviewed in a circuit court, by writ of error or appeal to the  
22 Supreme Court of Appeals.

1 **§49-4-103. Proceedings may not be evidence against child, or be published; adjudication is not**  
2 **a conviction and not a bar to civil service eligibility.**

3 Any evidence given in any cause or proceeding under this chapter, or any order, judgment  
4 or finding therein, or any adjudication upon the status of juvenile delinquent heretofore made or  
5 rendered, may not in any civil, criminal or other cause or proceeding whatever in any court, be lawful  
6 or proper evidence against the child for any purpose whatsoever except in subsequent cases under  
7 this chapter involving the same child; nor may the name of any child, in connection with any  
8 proceedings under this chapter, be published in any newspaper without a written order of the court;  
9 nor may any adjudication upon the status of any child by a juvenile court operate to impose any of  
10 the civil disabilities ordinarily imposed by conviction, nor may any child be deemed a criminal by  
11 reason of the adjudication, nor may the adjudication be deemed a conviction, nor may any  
12 adjudication operate to disqualify a child in any future civil service examination, appointment, or  
13 application.

14 **§49-4-104. General provisions relating to court orders regarding custody; rules.**

15 (a) The Supreme Court of Appeals, in consultation with the Department of Health and  
16 Human Resources and the Division of Juvenile Services in order to eliminate unnecessary state  
17 funding of out-of-home placements where federal funding is available, shall develop and disseminate  
18 form court orders to effectuate chapter forty-nine of this code which authorize disclosure and transfer  
19 of juvenile records between agencies while requiring maintenance of confidentiality, Child Welfare  
20 Services, 42 U.S.C. §620, *et seq.*, and 42 U.S.C. §670, *et seq.*, relating to the promulgation of  
21 uniform court orders for placement of minor children and the rules promulgated thereunder, for use  
22 in the courts of the state.

1 (b) Judges and magistrates, upon being supplied the form orders required by subsection (a)  
2 of this section, shall act to ensure the proper form order is entered in the case so as to allow federal  
3 funding of eligible out-of-home placements.

4 **§49-4-105. Hearing required to determine "reasonable efforts."**

5 A hearing by a circuit court of competent jurisdiction is required to determine whether or not  
6 "reasonable efforts" have been made to stabilize and maintain the family situation before any child  
7 may be placed outside the home, except that in the event any child appears in imminent danger of  
8 serious bodily or emotional injury or death in any home, a post-removal hearing shall be substituted  
9 for the pre-removal hearing.

10 **§49-4-106. Limitation on out-of-home placements.**

11 Before any child may be directed for placement in a particular facility or for services of a  
12 child welfare agency licensed by the department, a court shall make inquiry into the bed space of the  
13 facility available to accommodate additional children and the ability of the child welfare agency to  
14 meet the particular needs of the child. A court may not order the placement of a child in a particular  
15 facility, including status offender facilities operated by the Division of Juvenile Services, if it has  
16 reached its licensed capacity or order conditions on the placement of the child which conflict with  
17 licensure regulations applicable to the facility promulgated pursuant to article two of this chapter and  
18 articles one-a, nine and seventeen, chapter twenty-seven of this code. Further, a child welfare agency  
19 is not required to accept placement of a child at a particular facility if the facility remains at licensed  
20 capacity or is unable to meet the particular needs of the child. A child welfare agency is not required  
21 to make special dispensation or accommodation, reorganize existing child placement, or initiate early  
22 release of children in placement to reduce actual occupancy at the facility.

1 **§49-4-107. Penalties.**

2 A person who violates an order, rule, or regulation made under the authority of this chapter,  
3 or who violates this chapter for which punishment has not been specifically provided, is guilty of a  
4 misdemeanor and, upon conviction shall be fined not less than \$10 nor more than \$100, or confined  
5 in jail not less than five days nor more than six months, or both fined and confined.

6 **§49-4-108. Payment of services.**

7 At any time during any proceedings brought pursuant to this article, the court may upon its  
8 own motion, or upon a motion of any party, order the Department of Health and Human Resources  
9 to pay for professional services rendered by a psychologist, psychiatrist, physician, therapist or other  
10 health care professional to a child or other party to the proceedings. Professional services include,  
11 but are not limited to, treatment, therapy, counseling, evaluation, report preparation, consultation and  
12 preparation of expert testimony. The Department of Health and Human Resources shall set the fee  
13 schedule for the services in accordance with the Medicaid rate, if any, or the customary rate and  
14 adjust the schedule as appropriate. Every psychologist, psychiatrist, physician, therapist or other  
15 health care professional shall be paid by the Department of Health and Human Resources upon  
16 completion of services and submission of a final report or other information and documentation as  
17 required by the policies and procedures implemented by the Department of Health and Human  
18 Resources.

19 **§49-4-109. Guardianship of estate of child unaffected.**

20 This chapter may not be construed to give the guardian appointed hereunder the guardianship  
21 of the estate of the child, or to change the age of minority for any other purpose except the custody  
22 of the child.

1           The guardian of the estate of a child committed to guardianship hereunder shall furnish, when  
2 and in the form as may be required, full information concerning the property of the child to the state  
3 department or to the court or judge before whom the case of the child is heard.

4 **§49-4-110. Foster care; quarterly status review; transitioning adults; annual permanency**  
5 **hearings.**

6           (a) For each child who remains in foster care as a result of a juvenile proceeding or as a result  
7 of a child abuse and neglect proceeding, the circuit court with the assistance of the multidisciplinary  
8 treatment team shall conduct quarterly status reviews in order to determine the safety of the child,  
9 the continuing necessity for and appropriateness of the placement, the extent of compliance with the  
10 case plan, and the extent of progress which has been made toward alleviating or mitigating the  
11 causes necessitating placement in foster care, and to project a likely date by which the child may be  
12 returned to and safety maintained in the home or placed for adoption or legal guardianship.  
13 Quarterly status reviews shall commence three months after the entry of the placement order. The  
14 permanency hearing provided in subsection (c) of this section may be considered a quarterly status  
15 review.

16           (b) For each transitioning adult as that term is defined in section two hundred two, article one  
17 of this chapter who remains in foster care, the circuit court shall conduct status review hearings as  
18 described in subsection (a) of this section once every three months until permanency is achieved.

19           (c) For each child or transitioning adult who continues to remain in foster care, the circuit  
20 court shall conduct a permanency hearing no later that twelve months after the date the child or  
21 transitioning adult is considered to have entered foster care, and at least once every twelve months  
22 thereafter until permanency is achieved. For purposes of permanency planning for transitioning

1 adults, the circuit court shall make factual findings and conclusions of law as to whether the  
2 department made reasonable efforts to finalize a permanency plan to prepare a transitioning adult  
3 for emancipation or independence or another approved permanency option such as, but not limited  
4 to, adoption or legal guardianship pursuant to the West Virginia Guardianship and Conservatorship  
5 Act.

6 (d) Nothing in this section may be construed to abrogate the responsibilities of the circuit  
7 court from conducting required hearings as provided in other provisions of this code, procedural  
8 court rules, or setting required hearings at the same time.

9 **§49-4-111. Criteria and procedure for temporary removal of child from foster home; foster  
10 care arrangement termination; notice of child's availability for placement;  
11 adoption; sibling placements; limitations.**

12 (a) The department may temporarily remove a child from a foster home based on an  
13 allegation of abuse or neglect, including sexual abuse, that occurred while the child resided in the  
14 home. If the department determines that reasonable cause exists to support the allegation, the  
15 department shall remove all foster children from the arrangement, preclude contact between the  
16 children and the foster parents, provide written notice to the multidisciplinary treatment team  
17 members and schedule an emergency team meeting to address placement options. If, after  
18 investigation, the allegation is determined to be true by the department or after a judicial proceeding  
19 a court finds the allegation to be true or if the foster parents fail to contest the allegation in writing  
20 within twenty calendar days of receiving written notice of the allegations, the department shall  
21 permanently terminate all foster care arrangements with the foster parents. If the department  
22 determines that the abuse occurred due to no act or failure to act on the part of the foster parents and



1 that continuation of the foster care arrangement is in the best interests of the child, the department  
2 may, in its discretion, elect not to terminate the foster care arrangement or arrangements.

3 (b) When a child has been placed in a foster care arrangement for a period in excess of  
4 eighteen consecutive months, and the department determines that the placement is a fit and proper  
5 place for the child to reside, the foster care arrangement may not be terminated unless the termination  
6 is in the best interest of the child and:

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

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

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

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

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

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

18 (c) When a child has been residing in a foster home for a period in excess of six consecutive  
19 months in total and for a period in excess of thirty days after the parental rights of the child's  
20 biological parents have been terminated and the foster parents have not made an application to the  
21 department to establish an intent to adopt the child within thirty days of parental rights being  
22 terminated, the department may terminate the foster care arrangement if another, more beneficial,

1 long-term placement of the child is developed. If the child is twelve years of age or older, the child  
2 shall be provided the option of remaining in the existing foster care arrangement if the child so  
3 desires and if continuation of the existing arrangement is in the best interest of the child.

4 (d)(1) When a child is placed into foster care or becomes eligible for adoption and a sibling  
5 or siblings have previously been placed in foster care or have been adopted, the department shall  
6 notify the foster parents or adoptive parents of the previously placed or adopted sibling or siblings  
7 of the child's availability for foster care placement or adoption to determine if the foster parents or  
8 adoptive parents are desirous of seeking a foster care arrangement or adoption of the child.

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

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

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

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

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

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

15 (4) In any proceeding brought by the department seeking to maintain separation of siblings,  
16 notice afforded, in addition to any other persons required by any provision of this code to receive  
17 notice, to the persons seeking to adopt a sibling or siblings of a previously placed or adopted child  
18 and the persons may be parties to the action.

19 (f) Where two or more siblings have been placed in separate foster care arrangements and  
20 the foster parents of the siblings have made application to the department to enter into a foster care  
21 arrangement regarding the sibling or siblings not in their home or where two or more adoptive  
22 parents seek to adopt a sibling or siblings of a child they have previously adopted, the department's

1 determination as to placing the child in a foster care arrangement or in an adoptive home shall be  
2 based solely upon the best interests of the siblings.

3 **§49-4-112. Subsidized adoption and legal guardianship; conditions.**

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

11 (1) They have a physical or mental disability;

12 (2) They are emotionally disturbed;

13 (3) They are older children;

14 (4) They are a part of a sibling group; or

15 (5) They are a member of a racial or ethnic minority.

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

21 (2) Adoption or legal guardianship subsidies in individual cases may commence with the  
22 adoption or legal guardianship placement, and will vary with the needs of the child as well as the

1 availability of other resources to meet the child's needs. The subsidy may be for special services  
2 only, or for money payments, and either for a limited period, or for a long term, or for any  
3 combination of the foregoing.

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

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

11 (5) In addition, the department shall provide either Medicaid or other health insurance  
12 coverage for any special needs child for whom there is an adoption or legal guardianship assistance  
13 agreement between the department and the adoptive parent or legal guardian and who the department  
14 determines cannot be placed with an adoptive parent or legal guardian without medical assistance  
15 because the child has special needs for medical, mental health or rehabilitative care.

16 (c) After reasonable efforts have been made without the use of subsidy and no appropriate  
17 adoptive family or legal guardian has been found for the child, the department shall certify the child  
18 as eligible for a subsidy in the event of adoption or a legal guardianship. Reasonable efforts to place  
19 a child without a subsidy shall not be required if it is in the best interest of the child because of the  
20 factors as the existence of significant emotional ties developed between the child and the prospective  
21 parent or guardian while in care as a foster child.

22 (d) If the child is the dependent of a voluntary licensed child-placing agency, that agency

1 shall present to the department evidence of the inability to place the child for adoption or legal  
2 guardianship without the use of subsidy or evidence that the efforts would not be in the best interests  
3 of the child. In no event may the value of the services and assistance provided by the department  
4 under an agreement pursuant to this section exceed the value of assistance available to foster families  
5 in similar circumstances. All records regarding subsidized adoptions or legal guardianships are to  
6 be held in confidence; however, records regarding the payment of public funds for subsidized  
7 adoptions or legal guardianships shall be available for public inspection provided they do not directly  
8 or indirectly identify any child or persons receiving funds for the child.

9 **§49-4-113. Duration of custody or guardianship of children committed to department.**

10 (a) A child committed to the department for guardianship, after termination of parental rights,  
11 shall remain in the care of the department until he or she attains the age of eighteen years, or is  
12 married, or is adopted, or guardianship is relinquished through the court.

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

16 **§49-4-114. Consent by agency or department to adoption of child; statement of**  
17 **relinquishment by parent; counseling services; petition to terminate**  
18 **parental rights; notice; hearing; court orders.**

19 (a)(1) Whenever a child welfare agency licensed to place children for adoption or the  
20 Department of Health and Human Resources has been given the permanent legal and physical  
21 custody of any child and the rights of the mother and the rights of the legal, determined, putative,  
22 outside or unknown father of the child have been terminated by order of a court of competent

1 jurisdiction or by a legally executed relinquishment of parental rights, the child welfare agency or  
2 the department may consent to the adoption of the child pursuant to article twenty-two, chapter  
3 forty-eight of this code.

4 (2) Relinquishment for an adoption to an agency or to the department is required of the same  
5 persons whose consent or relinquishment is required under section three hundred one, article  
6 twenty-two, chapter forty-eight of this code. The form of any relinquishment so required shall  
7 conform as nearly as practicable to the requirements established in section three hundred three,  
8 article twenty-two, chapter forty-eight, and all other provisions of that article providing for  
9 relinquishment for adoption shall govern the proceedings herein.

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

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

21 (b)(1) Whenever the mother has executed a relinquishment pursuant to this section, and the  
22 legal, determined, putative, outsider or unknown father, as those terms are defined pursuant to part

1 one, article twenty-two, chapter forty-eight of this code, has not executed a relinquishment, the child  
2 welfare agency or the department may, by verified petition, seek to have the father's rights  
3 terminated based upon the grounds of abandonment or neglect of the child. Abandonment may be  
4 established in accordance with section three hundred six, article twenty-two, chapter forty-eight of  
5 this code.

6 (2) Unless waived by a writing acknowledged as in the case of deeds or by other proper  
7 means, notice of the petition shall be 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 the child.

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

16 (c)(1) Upon the filing of the verified petition seeking to have the parental rights terminated,  
17 the court shall set a hearing on the petition. A copy of the petition and notice of the date, time and  
18 place of the hearing on the petition shall be personally served on any respondent at least twenty days  
19 prior to the date set for the hearing.

20 (2) The notice shall inform the person that his or her parental rights, if any, may be  
21 terminated in the proceeding and that the person may appear and defend any rights within twenty  
22 days of the service. In the case of a person who is a nonresident or whose whereabouts are unknown,



1 service shall be achieved: (1) By personal service; (2) by registered or certified mail, return receipt  
2 requested, postage prepaid, to the person's last known address, with instructions to forward; or (3)  
3 by publication. If personal service is not acquired, then if the person giving notice has any  
4 knowledge of the whereabouts of the person to be served, including a last known address, service  
5 by mail shall be first attempted as herein provided. Service achieved by mail shall be complete upon  
6 mailing and is sufficient service without the need for notice by publication. In the event that no  
7 return receipt is received giving adequate evidence of receipt of the notice by the addressee or of  
8 receipt of the notice at the address to which the notice was mailed or forwarded, or if the  
9 whereabouts of the person are unknown, then the person required to give notice shall file with the  
10 court an affidavit setting forth the circumstances of any attempt to serve the notice by mail, and the  
11 diligent efforts to ascertain the whereabouts of the person to be served. If the court determines that  
12 the whereabouts of the person to be served cannot be ascertained and that due diligence has been  
13 exercised to ascertain the person's whereabouts, then the court shall order service of the notice by  
14 publication as a Class II publication in compliance with article three, chapter fifty-nine of this code,  
15 and the publication area shall be the county where the proceedings are had, and in the county where  
16 the person to be served was last known to reside. In the case of a person under disability, service  
17 shall be made on the person and his or her personal representative, or if there be none, on a guardian  
18 ad litem.

19 (3) In the case of service by publication or mail or service on a personal representative or a  
20 guardian ad litem, the person is allowed thirty days from the date of the first publication or mailing  
21 of the service on a personal representative or guardian ad litem in which to appear and defend the  
22 parental rights.

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

3 (e) If the court finds that the person certified to parental rights is guilty of the allegations set  
4 forth in the petition, the court shall enter an order terminating his or her parental rights and shall  
5 award the legal and physical custody and control of the child to the petitioner.

6 **§49-4-115. Emancipation.**

7 (a) A child over the age of sixteen may petition a court to be declared emancipated. The  
8 parents or custodians shall be made respondents and, in addition to personal service thereon, there  
9 shall be publication as a Class II legal advertisement in compliance with article three, chapter  
10 fifty-nine of this code.

11 (b) Upon a showing that the child can provide for his or her physical and financial well-being  
12 and has the ability to make decisions for himself or herself, the court may for good cause shown  
13 declare the child emancipated. The child shall thereafter have full capacity to contract in his or her  
14 own right and the parents or custodians have no right to the custody and control of the child or duty  
15 to provide the child with care and financial support.

16 (c) A child over the age of sixteen years who marries is emancipated by operation of law.  
17 An emancipated child has all of the privileges, rights and duties of an adult, including the right of  
18 contract, except that the child remains a child as defined for the purposes of part ten, article two, or  
19 part seven, article four of this chapter.

20 **§49-4-116. Voluntary placement; petition; requirements; attorney appointed; court hearing;**  
21 **orders.**

22 (a) Within ninety days of the date of the signatures to a voluntary placement agreement, after

1 receipt of physical custody, the department shall file with the court a petition for review of the  
2 placement. The petition shall include:

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

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

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

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

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

11 (1) The child's attorney;

12 (2) The child, if twelve years of age or older;

13 (3) The child's parents or guardians;

14 (4) The child's foster parents;

15 (5) Any preadoptive parent or relative providing care for the child; and

16 (6) Any other persons as the court may in its discretion direct.

17 The child's presence at the hearing may be waived by the child's attorney at the request of the  
18 child or if the child would suffer emotional harm.

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

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

1 (2) Specifying under what conditions the child's placement will continue;

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

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

5 PART II. EMERGENCY POSSESSION OF CERTAIN

6 RELINQUISHED CHILDREN.

7 **§49-4-201. Accepting possession of certain relinquished children.**

8 (a) A hospital or health care facility operating in this state, shall, without a court order, take  
9 possession of a child if the child is voluntarily delivered to the hospital or health care facility by the  
10 child's parent within thirty days of the child's birth, and the parent did not express an intent to return  
11 for the child.

12 (b) A hospital or health care facility that takes possession of a child under this article shall  
13 perform any act necessary to protect the physical health or safety of the child. In accepting  
14 possession of the child, the hospital or health care facility may not require the person to identify  
15 himself or herself and shall otherwise respect the person's desire to remain anonymous.

16 **§49-4-202. Notification of possession of relinquished child; department responsibilities.**

17 (a) Not later than the close of the first business day after the date on which a hospital or  
18 health care facility takes possession of a child pursuant to section two hundred one of this article,  
19 the hospital or health care facility shall notify the Child Protective Services division of the  
20 Department of Health and Human Resources that it has taken possession of the child and shall  
21 provide the division any information provided by the parent delivering the child. The hospital or  
22 health care facility shall refer any inquiries about the child to the Child Protective Services division.

1 (b) The Department of Health and Human Resources shall assume the care, control and  
2 custody of the child as of the time of delivery of the child to the hospital or health care facility, and  
3 may contract with private child care agency for the care and placement of the child after the child  
4 leaves the hospital or health care facility.

5 **§49-4-203. Filing petition after accepting possession of relinquished child.**

6 A child of whom the Department of Health and Human Resources assumes care, control and  
7 custody under this article is a relinquished child and to be treated in all respects as a child taken into  
8 custody pursuant to section three hundred three, article four of this chapter. Upon taking custody of  
9 a child under this article, the department, with the cooperation of the county prosecuting attorney,  
10 shall cause a petition to be presented pursuant to section six hundred two, article four of this chapter.  
11 The department and county prosecuting attorney may not identify in the petition the parent(s) who  
12 utilized this article to relinquish his or her child. Thereafter, the department shall proceed in  
13 compliance with part six, of this article.

14 **§49-4-204. Immunity from certain prosecutions.**

15 A parent who relinquishes his or her child in good faith within thirty days of the child's birth  
16 under this article is immune from prosecution under subsection (a), section four, article eight-d,  
17 chapter sixty-one of this code.

18 **§49-4-205. Adoption eligibility.**

19 The child is eligible for adoption as an abandoned child under chapter forty-eight of the code.

20 **PART III. EMERGENCY CUSTODY OF CHILDREN PRIOR TO PETITION.**

21 **§49-4-301. Custody of a neglected child by law enforcement in emergency situations;**

22 **protective custody; requirements; notices; petition for appointment of special**

1                   **guardian; discharge; immunity.**

2           (a) A child believed to be a neglected child or an abused child may be taken into custody  
3 without the court order otherwise required by section six hundred two of this article by a  
4 law-enforcement officer if:

5           (1) The child is without supervision or shelter for an unreasonable period of time in light of  
6 the child's age and the ability to care for himself or herself in circumstances presenting an immediate  
7 threat of serious harm to that child; or

8           (2) That officer determines that the child is in a condition requiring emergency medical  
9 treatment by a physician and the child's parents, parent, guardian or custodian refuses to permit the  
10 treatment, or is unavailable for consent. A child who suffers from a condition requiring emergency  
11 medical treatment, whose parents, parent, guardian or custodian refuses to permit the providing of  
12 the emergency medical treatment, may be retained in a hospital by a physician against the will of the  
13 parents, parent, guardian or custodian, as provided in subsection (c) of this section.

14           (b) A child taken into protective custody pursuant to subsection (a) of this section may be  
15 housed by the department or in any authorized child shelter facility. The authority to hold the child  
16 in protective custody, absent a petition and proper order granting temporary custody pursuant to  
17 section six hundred two of this article, terminates by operation of law upon the happening of either  
18 of the following events, whichever occurs first:

19           (1) The expiration of ninety-six hours from the time the child is initially taken into protective  
20 custody; or

21           (2) The expiration of the circumstances which initially warranted the determination of an  
22 emergency situation.

1 No child may be considered in an emergency situation and custody withheld from the child's  
2 parents, parent, guardian or custodian presenting themselves, himself or herself in a fit and proper  
3 condition and requesting physical custody of the child. No child may be removed from a place of  
4 residence as in an emergency under this section until after:

5 (1) All reasonable efforts to make inquiries and arrangements with neighbors, relatives and  
6 friends have been exhausted; or if no arrangements can be made; and

7 (2) The state department may place in the residence a home services worker with the child  
8 for a period of not less than twelve hours to await the return of the child's parents, parent, guardian  
9 or custodian.

10 Prior to taking a child into protective custody as abandoned at a place at or near the residence  
11 of the child, the law-enforcement officer shall post a typed or legibly handwritten notice at the place  
12 the child is found, informing the parents, parent, guardian or custodian that the child was taken by  
13 a law-enforcement officer, the name, address and office telephone number of the officer, the place  
14 and telephone number where information can continuously be obtained as to the child's whereabouts,  
15 and if known, the worker for the state department having responsibility for the child.

16 (c) A child taken into protective custody pursuant to this section for emergency medical  
17 treatment may be held in a hospital under the care of a physician against the will of the child's  
18 parents, parent, guardian or custodian for a period not to exceed ninety-six hours. The parents,  
19 parent, guardian or custodian may not be denied the right to see or visit with the child in a hospital.  
20 The authority to retain a child in protective custody in a hospital as requiring emergency medical  
21 treatment terminates by operation of law upon the happening of either of the following events,  
22 whichever occurs first:

1 (1) When the condition, in the opinion of the physician, no longer required emergency  
2 hospitalization, or;

3 (2) Upon the expiration of ninety-six hours from the initiation of custody, unless within that  
4 time, a petition is presented and a proper order obtained from the circuit court.

5 (d) Prior to assuming custody of a child from a law-enforcement officer, pursuant to this  
6 section, a physician or worker from the department shall require a typed or legibly handwritten  
7 statement from the officer identifying the officer's name, address and office telephone number and  
8 specifying all the facts upon which the decision to take the child into protective custody was based,  
9 and the date, time and place of the taking.

10 (e) Any worker for the department assuming custody of a child pursuant to this section shall  
11 immediately notify the parents, parent, guardian or custodian of the child of the taking of the custody  
12 and the reasons therefor, if the whereabouts of the parents, parent, guardian or custodian are known  
13 or can be discovered with due diligence; and if not, notice and explanation shall be given to the  
14 child's closest relative, if his or her whereabouts are known or can be discovered with due diligence  
15 within a reasonable time. An inquiry shall be made of relatives and neighbors, and if a relative or  
16 appropriate neighbor is willing to assume custody of the child, the child will temporarily be placed  
17 in custody.

18 (f) No child may be taken into custody under circumstances not justified by this section or  
19 pursuant to section six hundred two of this article without appropriate process. Any retention of a  
20 child or order for retention of a child not complying with the time limits and other requirements  
21 specified in this article shall be void by operation of law.

22 (g) *Petition for appointment of special guardian.* -- Upon the verified petition of any person



1 showing:

2           (1) That any person under the age of eighteen years is threatened with or there is a substantial  
3 possibility that the person will suffer death, serious or permanent physical or emotional disability,  
4 disfigurement or suffering; and

5           (2) That disability, disfigurement or suffering is the result of the failure or refusal of any  
6 parent, guardian or custodian to procure, consent to or authorize necessary medical treatment, the  
7 circuit court of the county in which the person is located may direct the appointment of a special  
8 guardian for the purposes of procuring, consenting to and giving authorization for the administration  
9 of necessary medical treatment. The circuit court may not consider any petition filed in accordance  
10 with this section unless it is accompanied by a supporting affidavit of a licensed physician.

11           (h) *Notice of petition.* -- So far as practicable, the parents, guardian or custodian of any person  
12 for whose benefit medical treatment is sought shall be given notice of the petition for the  
13 appointment of a special guardian under this section. Notice is not necessary if it would cause a  
14 delay that would result in the death or irreparable harm to the person for whose benefit medical  
15 treatment is sought. Notice may be given in a form and manner as may be necessary under the  
16 circumstances.

17           (i) *Discharge of special guardian.* -- Upon the termination of necessary medical treatment  
18 to any person under this section, the circuit court order the discharge of the special guardian from  
19 any further authority, responsibility or duty.

20           (j) *Immunity from civil liability.* -- No person appointed special guardian in accordance with  
21 this article is civilly liable for any act done by virtue of the authority vested in him or her by order  
22 of the circuit court.

1 **§49-4-302. Authorizing a family court judge to order custody of a child in emergency**  
2 **situations; requirements; orders; investigative reports; notification required.**

3 (a) Notwithstanding the jurisdictional limitations contained in section two, article two-a,  
4 chapter fifty-one of this code, family court judges are authorized to order the department to take  
5 emergency custody of a child who is in the physical custody of a party to an action or proceeding  
6 before the family court, if the family court judge finds that there is clear and convincing evidence  
7 that:

8 (1) There exists an imminent danger to the physical well-being of the child as defined in  
9 section two hundred one, article one of this chapter;

10 (2) The child is not the subject of a pending action before the circuit court alleging abuse and  
11 neglect of the child; and

12 (3) There are no reasonable available alternatives to the emergency custody order.

13 (b) An order entered pursuant to subsection (a) of this section must include specific written  
14 findings.

15 (c) A copy of the order issued pursuant to subsection (a) of this section shall be transmitted  
16 forthwith to the department, the circuit court and the prosecuting attorney.

17 (d) Upon receipt of an order issued pursuant to subsection (a) of this section, the department  
18 shall immediately respond and assist the family court judge in emergency placement of the child.

19 (e)(1) Upon receipt of an order issued pursuant to subsection (a) of this section, the circuit  
20 court shall cause to be entered and served, an administrative order in the name of and regarding the  
21 affected child, directing the department to submit, within ninety-six hours from the time the child  
22 was taken into custody, an investigative report to both the circuit and family court.

1 (2) The investigative report shall include a statement of whether the department intends to  
2 file a petition pursuant to section six hundred two of this article.

3 (f)(1) An order issued pursuant to subsection (a) of this section terminates by operation of  
4 law upon expiration of ninety-six hours from the time the child is initially taken into protective  
5 custody unless a petition is filed with the circuit court under section six hundred two of this article  
6 within ninety-six hours from the time the child is initially taken into protective custody.

7 (2) The filing of a petition within ninety-six hours from the time the child is initially taken  
8 into protective custody extends the emergency custody order issued pursuant to subsection (a) of this  
9 section until a preliminary hearing is held before the circuit court, unless the circuit court orders  
10 otherwise.

11 (g)(1) Any worker for the department assuming custody of a child pursuant to this section  
12 shall immediately notify the parents, parent, grandparents, grandparent, guardian or custodian of the  
13 child of the taking of the custody and the reasons therefor if the whereabouts of the parents, parent,  
14 grandparents, grandparent, guardian or custodian are known or can be discovered with due diligence  
15 and, if not, a notice and explanation shall be given to the child's closest relative if his or her  
16 whereabouts are known or can be discovered with due diligence within a reasonable time. An inquiry  
17 shall be made of relatives and neighbors and, if an appropriate relative or neighbor is willing to  
18 assume custody of the child, the child will temporarily be placed in that person's custody.

19 (2) In the event no other reasonable alternative is available for temporary placement of a child  
20 pursuant to subdivision (1) of this subsection, the child may be housed by the department in an  
21 authorized child shelter facility.

22 **§49-4-303. Emergency removal by department before filing of petition; conditions; referee;**

1                   **application for emergency custody; order.**

2           Prior to the filing of a petition, a child protective service worker may take the child or  
3 children into his or her custody (also known as removing the child) without a court order when:

4           (1) In the presence of a child protective service worker a child or children are in an  
5 emergency situation which constitutes an imminent danger to the physical well-being of the child  
6 or children, as that phrase is defined in section two hundred one, article one of this chapter; and

7           (2) The worker has probable cause to believe that the child or children will suffer additional  
8 child abuse or neglect or will be removed from the county before a petition can be filed and  
9 temporary custody can be ordered.

10          After taking custody of the child or children prior to the filing of a petition, the worker shall  
11 forthwith appear before a circuit judge or referee of the county where custody was taken and  
12 immediately apply for an order. If no judge or referee is available, the worker shall appear before a  
13 circuit judge or referee of an adjoining county, and immediately apply for an order. This order shall  
14 ratify the emergency custody of the child pending the filing of a petition.

15          The circuit court of every county in the state shall appoint at least one of the magistrates of  
16 the county to act as a referee. He or she serves at the will and pleasure of the appointing court, and  
17 shall perform the functions prescribed for the position by this subsection.

18          The parents, guardians or custodians of the child or children may be present at the time and  
19 place of application for an order ratifying custody. If at the time the child or children are taken into  
20 custody by the worker he or she knows which judge or referee is to receive the application, the  
21 worker shall so inform the parents, guardians or custodians.

22          The application for emergency custody may be on forms prescribed by the Supreme Court

1 of Appeals or prepared by the prosecuting attorney or the applicant, and shall set forth facts from  
2 which it may be determined that the probable cause described above in this subsection exists. Upon  
3 the sworn testimony or other evidence as the judge or referee deems sufficient, the judge or referee  
4 may order the emergency taking by the worker to be ratified. If appropriate under the circumstances,  
5 the order may include authorization for an examination as provided in subsection (b), section six  
6 hundred three of this article.

7         If a referee issues an order, the referee shall by telephonic communication have that order  
8 orally confirmed by a circuit judge of the circuit or an adjoining circuit who shall, on the next  
9 judicial day, enter an order of confirmation. If the emergency taking is ratified by the judge or  
10 referee, emergency custody of the child or children is vested in the department until the expiration  
11 of the next two judicial days, at which time any child taken into emergency custody shall be returned  
12 to the custody of his or her parent or guardian or custodian unless a petition has been filed and  
13 custody of the child has been transferred under section six hundred two of this article.

14 PART IV. MULTIDISCIPLINARY TEAMS, CASE PLANS,  
15 TRANSITION PLANS AND AFTERCARE PLANS.

16 **§49-4-401. Purpose; system to be a complement to existing programs.**

17         (a) This article:

18         (1) Provides a system for evaluation of and coordinated service delivery for children who  
19 may be victims of abuse or neglect and children undergoing certain status offense and delinquency  
20 proceedings;

21         (2) Establishes, as a complement to other programs of the Department of Health and Human  
22 Resources, a multidisciplinary screening, advisory and planning system to assist courts in facilitating

1 permanency planning, following the initiation of judicial proceedings, to recommend alternatives  
2 and to coordinate evaluations and in-community services; and

3 (3) Ensures that children are safe from abuse and neglect and to coordinate investigation of  
4 alleged child abuse offenses and competent criminal prosecution of offenders to ensure that safety,  
5 as determined appropriate by the prosecuting attorney.

6 (b) Nothing in this article precludes any multidisciplinary team from considering any case  
7 upon the consent of the members of the team.

8 **§49-4-402. Multidisciplinary investigative teams; establishment; membership; procedures;**  
9 **coordination among agencies; confidentiality.**

10 (a) The prosecuting attorney of each county shall establish a multidisciplinary investigative  
11 team in that county. The multidisciplinary team shall be headed and directed by the prosecuting  
12 attorney, or his or her designee, and includes as permanent members:

13 (1) The prosecuting attorney, or his or her designee;

14 (2) A local child protective services caseworker from the Department of Health and Human  
15 Resources;

16 (3) A local law-enforcement officer employed by a law-enforcement agency in the county;

17 (4) A child advocacy center representative, where available;

18 (5) A health care provider with pediatric and child abuse expertise, where available;

19 (6) A mental health professional with pediatric and child abuse expertise, where available;

20 (7) An educator; and

21 (8) A representative from a licensed domestic violence program serving the county.

22 The Department of Health and Human Resources and any local law-enforcement agency or

1 agencies selected by the prosecuting attorney shall appoint their representatives to the team by  
2 submitting a written designation of the team to the prosecuting attorney of each county within thirty  
3 days of the prosecutor's request that the appointment be made. Within fifteen days of the  
4 appointment, the prosecuting attorney shall notify the chief judge of each circuit within which the  
5 county is situated of the names of the representatives so appointed. Any other person or any other  
6 appointee of an agency who may contribute to the team's efforts to assist a minor child as may be  
7 determined by the permanent members of the team may also be appointed as a member of the team  
8 by the prosecutor with notification to the chief judge.

9           (b) Any permanent member of the multidisciplinary investigative team shall refer all cases  
10 of accidental death of any child reported to their agency and all cases when a child dies while in the  
11 custody of the state for investigation and review by the team. The multidisciplinary investigative  
12 team shall meet at regular intervals at least once every calendar month.

13           (c) The investigative team shall be responsible for coordinating or cooperating in the initial  
14 and ongoing investigation of all civil and criminal allegations pertinent to cases involving child  
15 sexual assault, child sexual abuse, child abuse and neglect and shall make a recommendation to the  
16 county prosecuting attorney as to the initiation or commencement of a civil petition and/or criminal  
17 prosecution.

18           (d) State, county and local agencies shall provide the multidisciplinary investigative team  
19 with any information requested in writing by the team as allowable by law or upon receipt of a  
20 certified copy of the circuit court's order directing the agencies to release information in its  
21 possession relating to the child. The team shall assure that all information received and developed  
22 in connection with this article remains confidential. For purposes of this section, the term

1 “confidential” shall be construed in accordance with article five of this chapter.

2 **§49-4-403. Multidisciplinary treatment planning process; coordination; access to information.**

3 (a)(1) A multidisciplinary treatment planning process for cases initiated pursuant to part six  
4 and part seven of article four, shall be established within each county of the state, either separately  
5 or in conjunction with a contiguous county, by the secretary of the department with advice and  
6 assistance from the prosecutor's advisory council as set forth in section four, article four, chapter  
7 seven of this code. The Division of Juvenile Services shall establish a similar treatment planning  
8 process for delinquency cases in which the juvenile has been committed to its custody, including  
9 those cases in which the juvenile has been committed for examination and diagnosis.

10 (2) This section does not require a multidisciplinary team meeting to be held prior to  
11 temporarily placing a child or juvenile out-of-home under exigent circumstances or upon a court  
12 order placing a juvenile in a facility operated by the Division of Juvenile Services.

13 (b) The case manager in the Department of Health and Human Resources for the child, family  
14 or juvenile or the case manager in the Division of Juvenile Services for a juvenile shall convene a  
15 treatment team in each case when it is required pursuant to this article.

16 (1) Prior to disposition, in each case in which a treatment planning team has been convened,  
17 the team shall advise the court as to the types of services the team has determined are needed and  
18 the type of placement, if any, which will best serve the needs of the child. If the team determines that  
19 an out-of-home placement will best serve the needs of the child, the team shall first consider  
20 placement with appropriate relatives then with foster care homes, facilities or programs located  
21 within the state. The team may only recommend placement in an out-of-state facility if it concludes,  
22 after considering the best interests and overall needs of the child, that there are no available and



1 suitable in-state facilities which can satisfactorily meet the specific needs of the child.

2 (2) Any person authorized by this chapter to convene a multidisciplinary team meeting may  
3 seek and receive an order of the circuit court setting the meeting and directing attendance. Members  
4 of the multidisciplinary team may participate in team meetings by telephone or video conferencing.  
5 This subsection does not prevent the respective agencies from designating a person other than the  
6 case manager as a facilitator for treatment team meetings. Written notice shall be provided to all  
7 team members of the availability to participate by videoconferencing.

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

12 (d) The multidisciplinary treatment team shall be afforded access to information in the  
13 possession of the Department of Health and Human Resources, Division of Juvenile Services,  
14 law-enforcement agencies and other state, county and local agencies. Those agencies shall cooperate  
15 in the sharing of information, as may be provided in article five or this chapter or any other relevant  
16 provision of law. Any multidisciplinary team member who acquires confidential information may  
17 not disclose the information except as permitted by this code or court rules.

18 **§49-4-404. Court review of service plan; hearing; required findings; order; team member's**  
19 **objections.**

20 (a) In any case in which a multidisciplinary treatment team develops an individualized service  
21 plan for a child or family pursuant to this article, the court shall review the proposed service plan to  
22 determine if implementation of the plan is in the child's best interests. If the multidisciplinary team

1 cannot agree on a plan or if the court determines not to adopt the team's recommendations, it shall,  
2 upon motion or *sua sponte*, schedule and hold within ten days of the determination, and prior to the  
3 entry of an order placing the child in the custody of the department or in an out-of-home setting, a  
4 hearing to consider evidence from the team as to its rationale for the proposed service plan. If, after  
5 a hearing held pursuant to this section, the court does not adopt the teams's recommended service  
6 plan, it shall make specific written findings as to why the team's recommended service plan was not  
7 adopted.

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

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

18 **§49-4-405. Multidisciplinary treatment planning process involving child abuse and neglect;**  
19 **team membership; duties; reports; admissions.**

20 (a) Within thirty days of the initiation of a judicial proceeding pursuant to part six, of this  
21 article, the Department of Health and Human Services shall convene a multidisciplinary treatment  
22 team to assess, plan and implement a comprehensive, individualized service plan for children who

1 are victims of abuse or neglect and their families. The multidisciplinary team shall obtain and utilize  
2 any assessments for the children or the adult respondents that it deems necessary to assist in the  
3 development of that plan.

4 (b) In a case initiated pursuant to part six of this article, the treatment team consists of:

5 (1) The child or family's case manager in the Department of Health and Human Resources;

6 (2) The adult respondent or respondents;

7 (3) The child's parent or parents, guardians, any copetitioners, custodial relatives of the child,  
8 foster or preadoptive parents;

9 (4) Any attorney representing an adult respondent or other member of the treatment team;

10 (5) The child's counsel or the guardian ad litem;

11 (6) The prosecuting attorney or his or her designee;

12 (7) A member of a child advocacy center when the child has been processed through the child  
13 advocacy center program or programs or it is otherwise appropriate that a member of the child  
14 advocacy center participate;

15 (8) Any court-appointed special advocate assigned to a case;

16 (9) Any other person entitled to notice and the right to be heard;

17 (10) An appropriate school official; and

18 (11) Any other person or agency representative who may assist in providing  
19 recommendations for the particular needs of the child and family, including domestic violence  
20 service providers.

21 The child may participate in multidisciplinary treatment team meetings if the child's  
22 participation is deemed appropriate by the multidisciplinary treatment team. Unless otherwise

1 ordered by the court, a party whose parental rights have been terminated and his or her attorney may  
2 not be given notice of a multidisciplinary treatment team meeting and does not have the right to  
3 participate in any treatment team meeting.

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

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

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

21 **§49-4-406. Multidisciplinary treatment process for juvenile status offenders and delinquents;**  
22 **requirements; custody; procedure; reports; cooperation; inadmissability of**

1                   **certain statements.**

2           (a) When a juvenile is adjudicated as a status offender pursuant to section seven hundred  
3 eleven, of this article, the Department of Health and Human Resources shall promptly convene a  
4 multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform  
5 comprehensive assessment instrument or protocol, to determine the juvenile's mental and physical  
6 condition, maturity and education level, home and family environment, rehabilitative needs and  
7 recommended service plan, which shall be provided in writing to the court and team members. Upon  
8 completion of the assessment, the treatment team shall prepare and implement a comprehensive,  
9 individualized service plan for the juvenile.

10          (b) When a juvenile is adjudicated as a delinquent or has been granted a preadjudicatory  
11 community supervision period pursuant to section seven hundred eight of this article, the court,  
12 either upon its own motion or motion of a party, may require the Department of Health and Human  
13 Resources to convene a multidisciplinary treatment team and conduct an assessment, utilizing a  
14 standard uniform comprehensive assessment instrument or protocol, to determine the juvenile's  
15 mental and physical condition, maturity and education level, home and family environment,  
16 rehabilitative needs and recommended service plan, which shall be provided in writing to the court  
17 and team members. A referral to the Department of Health and Human Resources to convene a  
18 multidisciplinary treatment team and to conduct an assessment shall be made when the court is  
19 considering placing the juvenile in the department's custody or placing the juvenile out-of-home at  
20 the department's expense pursuant to section seven hundred fourteen, of this article. In any  
21 delinquency proceeding in which the court requires the Department of Health and Human Resources  
22 to convene a multidisciplinary treatment team, the probation officer shall notify the department at

1 least fifteen working days before the court proceeding in order to allow the department sufficient  
2 time to convene and develop an individualized service plan for the juvenile.

3 (c) When a juvenile has been adjudicated and committed to the custody of the Director of the  
4 Division of Juvenile Services, including those cases in which the juvenile has been committed for  
5 examination and diagnosis, the Division of Juvenile Services shall promptly convene a  
6 multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform  
7 comprehensive assessment instrument or protocol, to determine the juvenile's mental and physical  
8 condition, maturity and education level, home and family environment, rehabilitative needs and  
9 recommended service plan. Upon completion of the assessment, the treatment team shall prepare and  
10 implement a comprehensive, individualized service plan for the juvenile, which will be provided in  
11 writing to the court and team members. In cases where the juvenile is committed as a post-sentence  
12 disposition to the custody of the Division of Juvenile Services, the plan shall be reviewed quarterly  
13 by the multidisciplinary treatment team. Where a juvenile has been detained in a facility operated  
14 by the Division of Juvenile Services without an active service plan for more than sixty days, the  
15 director of the facility may call a multidisciplinary team meeting to review the case and discuss the  
16 status of the service plan.

17 (d)(1) The rules of juvenile procedure govern the procedure for obtaining an assessment of  
18 a juvenile, preparing an individualized service plan and submitting the plan and assessment to the  
19 court.

20 (2) In juvenile proceedings conducted pursuant to part seven of this article, the treatment  
21 team consists of:

22 (A) The juvenile;

1 (B) The juvenile's case manager in the Department of Health and Human Resources or the  
2 Division of Juvenile Services;

3 (C) The juvenile's parent or parents, guardian or guardians or custodial relatives;

4 (D) The juvenile's attorney;

5 (E) Any attorney representing a member of the treatment team;

6 (F) The prosecuting attorney or his or her designee;

7 (G) An appropriate school official; and

8 (H) Any other person or agency representative who may assist in providing recommendations  
9 for the particular needs of the juvenile and family, including domestic violence service providers.

10 In delinquency proceedings, the probation officer shall be a member of a treatment team. When  
11 appropriate, the juvenile case manager in the Department of Health and Human Resources and the  
12 Division of Juvenile Services shall cooperate in conducting multidisciplinary treatment team  
13 meetings when it is in the juvenile's best interest.

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

22 (4) The multidisciplinary treatment team shall submit written reports to the court as required

1 by applicable law or by the court, shall meet with the court at least every three months, as long as  
2 the juvenile remains in the legal or physical custody of the state, and shall be available for status  
3 conferences and hearings as required by the court.

4 (5) In any case in which a juvenile has been placed out of his or her home except for a  
5 temporary placement in a shelter or detention center, the multidisciplinary treatment team shall  
6 cooperate with the state agency in whose custody the juvenile is placed to develop an after-care plan.  
7 The rules of juvenile procedure and section four hundred nine of this article govern the development  
8 of an after-care plan for a juvenile, the submission of the plan to the court and any objection to the  
9 after-care plan.

10 (6) If a juvenile respondent admits the underlying allegations of the case initiated pursuant  
11 to part VII of this article, in the multidisciplinary treatment planning process, his or her statements  
12 may not be used in any juvenile or criminal proceedings against the juvenile, except for perjury or  
13 false swearing.

14 **§49-4-407. Team directors; records; case logs.**

15 All persons directing any team created pursuant to this article shall maintain records of each  
16 meeting indicating the name and position of persons attending each meeting and the number of cases  
17 discussed at the meeting, including a designation of whether or not that case was previously  
18 discussed by any multidisciplinary team. Further, all investigative teams shall maintain a log of all  
19 cases to indicate the number of referrals to that team, whether or not a police report was filed with  
20 the prosecuting attorney's office, whether or not a petition was sought pursuant to part six of this  
21 article or whether or not a criminal complaint was issued and a case was criminally prosecuted. All  
22 treatment teams shall maintain a log of all cases to indicate the basis for failure to review a case for



1 a period in excess of six months.

2 **§49-4-408. Unified child and family case plans; treatment teams; programs; agency**  
3 **requirements.**

4 (a) The Department of Health and Human Resources shall develop a unified child and family  
5 case plan for every family wherein a person has been referred to the department after being allowed  
6 an improvement period or where the child is placed in foster care. The case plan must be filed within  
7 sixty days of the child coming into foster care or within thirty days of the inception of the  
8 improvement period, whichever occurs first. The department may also prepare a case plan for any  
9 person who voluntarily seeks child abuse and neglect services from the department, or who is  
10 referred to the department by another public agency or private organization. The case plan  
11 provisions shall comply with federal law and the rules of procedure for child abuse and neglect  
12 proceedings.

13 (b) The department shall convene a multidisciplinary treatment team, which shall develop  
14 the case plan. Parents, guardians or custodians shall participate fully in the development of the case  
15 plan, and the child shall also fully participate if sufficiently mature and the child's participation is  
16 otherwise appropriate. The case plan may be modified from time to time to allow for flexibility in  
17 goal development, and in each case the modifications shall be submitted to the court in writing.  
18 Reasonable efforts to place a child for adoption or with a legal guardian may be made at the same  
19 time as reasonable efforts are being made to prevent removal or to make it possible for a child to  
20 return safely home. The court shall examine the proposed case plan or any modification thereof, and  
21 upon a finding by the court that the plan or modified plan can be easily communicated, explained  
22 and discussed so as to make the participants accountable and able to understand the reasons for any

1 success or failure under the plan, the court shall inform the participants of the probable action of the  
2 court if goals are met or not met.

3 (c) In furtherance of the provisions of this article, the department shall, within the limits of  
4 available funds, establish programs and services for the following purposes:

5 (1) For the development and establishment of training programs for professional and  
6 paraprofessional personnel in the fields of medicine, law, education, social work and other relevant  
7 fields who are engaged in, or intend to work in, the field of the prevention, identification and  
8 treatment of child abuse and neglect; and training programs for children, and for persons responsible  
9 for the welfare of children, in methods of protecting children from child abuse and neglect;

10 (2) For the establishment and maintenance of centers, serving defined geographic areas,  
11 staffed by multidisciplinary teams and community teams of personnel trained in the prevention,  
12 identification and treatment of child abuse and neglect cases, to provide a broad range of services  
13 related to child abuse and neglect, including direct support as well as providing advice and  
14 consultation to individuals, agencies and organizations which request the services;

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

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

22 (5) Assisting public agencies or nonprofit private organizations or combinations thereof in

1 making applications for grants from, or in entering into contracts with, the federal Secretary of the  
2 Department of Health and Human Services for demonstration programs and projects designed to  
3 identify, prevent and treat child abuse and neglect.

4 (d) Agencies, organizations and programs funded to carry out the purposes of this section  
5 shall be structured so as to comply with any applicable federal law, any regulation of the federal  
6 Department of Health and Human Services or its secretary, and any final comprehensive plan of the  
7 federal advisory board on child abuse and neglect. In funding organizations, the department shall,  
8 to the extent feasible, ensure that parental organizations combating child abuse and neglect receive  
9 preferential treatment.

10 **§49-4-409. After care plans; contents; written comments; contacts; objections; courts.**

11 (a) Prior to the discharge of a child from any institution or facility to which the child was  
12 committed pursuant to this chapter, the superintendent of the institution or facility shall call a  
13 meeting of the multidisciplinary treatment team to which the child has been referred or, if no referral  
14 has been made, convene a multidisciplinary treatment team for any child for which a  
15 multidisciplinary treatment plan is required by this article and forward a copy of the child's proposed  
16 after-care plan to the court which committed the child. A copy of the plan shall also be sent to: (1)  
17 The child's parents or legal guardian; (2) the child's lawyer; (3) the child's probation officer or  
18 community mental health center professional; (4) the prosecuting attorney of the county in which  
19 the original commitment proceedings were held; and (5) the principal of the school which the child  
20 will attend. The plan shall have a list of the names and addresses of these persons attached to it.

21 (b) The after-care plan shall contain a detailed description of the education, counseling and  
22 treatment which the child received while at the institution or facility and it shall also propose a plan

1 for education, counseling and treatment for the child upon the child's discharge. The plan shall also  
2 contain a description of any problems the child has, including the source of those problems, and it  
3 shall propose a manner for addressing those problems upon discharge.

4 (c) Within twenty-one days of receiving the plan, the child's probation officer or community  
5 mental health center professional shall submit written comments upon the plan to the court which  
6 committed the child. Any other person who received a copy of the plan pursuant to subsection (a)  
7 of this section may submit written comments upon the plan to the court which committed the child.  
8 Any person who submits comments upon the plan shall send a copy of those comments to every  
9 other person who received a copy of the plan.

10 (d) Within twenty-one days of receiving the plan, the child's probation officer or community  
11 mental health center professional shall contact all persons, organizations and agencies which are to  
12 be involved in executing the plan to determine whether they are capable of executing their  
13 responsibilities under the plan and to further determine whether they are willing to execute their  
14 responsibilities under the plan.

15 (e) If adverse comments or objections regarding the plan are submitted to the circuit court,  
16 it shall, within forty-five days of receiving the plan, hold a hearing to consider the plan and the  
17 adverse comments or objections. Any person, organization or agency which has responsibilities in  
18 executing the plan, or their representatives, may be required to appear at the hearing unless they are  
19 excused by the circuit court. Within five days of the hearing, the circuit court shall issue an order  
20 which adopts the plan as submitted or as modified in response to any comments or objections.

21 (f) If no adverse comments or objections are submitted, a hearing need not be held. In that  
22 case, the court shall consider the plan as submitted and shall, within forty-five days of receiving the

1 plan, issue an order which adopts the plan as submitted.

2 (g) Notwithstanding the provisions of subsections (e) and (f) of this section, the plan which  
3 is adopted by the court shall be in the best interests of the child and shall also be in conformity with  
4 West Virginia's interest in youths as embodied in this chapter.

5 (h) The court which committed the child shall appoint the child's probation officer or  
6 community mental health center professional to act as supervisor of the plan. The supervisor shall  
7 report the child's progress under the plan to the court every sixty days or until the court determines  
8 that no report or no further care is necessary.

9 **§49-4-410. Other agencies of government required to cooperate.**

10 State, county and local agencies shall provide the multidisciplinary teams with any  
11 information requested in writing by the team as allowable by law or upon receipt of a certified copy  
12 of the circuit court's order directing the agencies to release information in its possession relating to  
13 the child. The team shall assure that all information received and developed in connection with this  
14 article remain confidential. For purposes of this section, the term "confidential" shall be construed  
15 in accordance with article five of this chapter.

16 **§49-4-411. Law enforcement; prosecution; interference with performance of duties.**

17 No multidisciplinary team may take any action which, in the determination of the prosecuting  
18 attorney or his or her assistant, impairs the ability of the prosecuting attorney, his or her assistant,  
19 or any law-enforcement officer to perform his or her statutory duties.

20 **§49-4-412. Exemption from multidisciplinary team review before emergency out-of-home  
21 placements.**

22 Notwithstanding any provision of this article to the contrary, a multidisciplinary team

1 meeting may not be required before temporary out-of-home placement of a child in an emergency  
2 circumstance or for purposes of assessment as provided by this article. As soon a practicable after  
3 the emergency circumstance, the mutidisciplinary treatment team shall convene to explore placement  
4 options.

5 PART V. DUTIES OF THE PROSECUTING ATTORNEY.

6 **§49-4-501. Prosecuting attorney representation of the Department of Health and Human**  
7 **Resources; conflict resolution.**

8 (a) The prosecuting attorney shall render to the Department of Health and Human Resources,  
9 without additional compensation, the legal services as the department may require. This section shall  
10 not be construed to prohibit the department from developing plans for cooperation with courts,  
11 prosecuting attorneys, and other law-enforcement officials in a manner as to permit the state and its  
12 citizens to obtain maximum fiscal benefits under federal laws, rules and regulations.

13 (b) Nothing in this code may be construed to limit the authority of a prosecuting attorney to  
14 file an abuse or neglect petition, including the duties and responsibilities owed to its client the  
15 Department of Health and Human Resources, in his or her fulfillment of the provisions of this article.

16 (c) Whenever, pursuant to this chapter, a prosecuting attorney acts as counsel for the  
17 Department of Health and Human Resources, and a dispute arises between the prosecuting attorney  
18 and the department's representative because an action proposed by the other is believed to place the  
19 child at imminent risk of abuse or serious neglect, either the prosecuting attorney or the department's  
20 representative may contact the secretary of the department and the executive director of the West  
21 Virginia Prosecuting Attorneys Institute for prompt mediation and resolution. The secretary may  
22 designate either his or her general counsel or the director of social services to act as his or her

1 designee and the executive director may designate an objective prosecuting attorney as his or her  
2 designee.

3 **§49-4-502. Prosecuting attorney to represent and cooperate with persons other than the**  
4 **department in child abuse and neglect matters; duties.**

5 It is the duty of every prosecuting attorney to fully and promptly cooperate with persons  
6 seeking to apply for relief, including co-petitioners with the department, under this article in all cases  
7 of suspected child abuse and neglect; to promptly prepare applications and petitions for relief  
8 requested by those persons, to investigate reported cases of suspected child abuse and neglect for  
9 possible criminal activity; and to report at least annually to the grand jury regarding the discharge  
10 of his or her duties with respect thereto.

11 **§49-4-503. Prosecuting attorney to represent petitioner in juvenile cases.**

12 The prosecuting attorney shall represent the petitioner in all proceedings under this article  
13 before the court judge or magistrate having juvenile jurisdiction.

14 **§49-4-504. Prosecuting attorney duty to establish multidisciplinary investigative teams.**

15 The prosecuting attorney of each county shall establish a multidisciplinary investigative team  
16 in that county, pursuant to section four hundred two of this article, and section five, article four of  
17 chapter seven.

18 **PART VI. PROCEDURES IN CASES OF CHILD NEGLECT OR ABUSE.**

19 **§49-4-601. Petition to court when child believed neglected or abused; venue; notice; right to**  
20 **counsel; continuing legal education; findings; proceedings; procedure.**

21 (a) *Petitioner and venue.* -- If the department or a reputable person believes that a child is  
22 neglected or abused, the department or the person may present a petition setting forth the facts to the

1 circuit court in the county in which the child resides, or if the petition is being brought by the  
2 department, in the county in which the custodial respondent or other named party abuser resides, or  
3 in which the abuse or neglect occurred, or to the judge of the court in vacation. Under no  
4 circumstance may a party file a petition in more than one county based on the same set of facts.

5 (b) *Contents of Petition.* -- The petition shall be verified by the oath of some credible person  
6 having knowledge of the facts. The petition shall allege specific conduct including time and place,  
7 how the conduct comes within the statutory definition of neglect or abuse with references thereto,  
8 any supportive services provided by the department to remedy the alleged circumstances and the  
9 relief sought.

10 (c) *Court action upon filing of petition.* -- Upon filing of the petition, the court shall set a  
11 time and place for a hearing and shall appoint counsel for the child. When there is an order for  
12 temporary custody pursuant to this article, the preliminary hearing shall be held within ten days of  
13 the order continuing or transferring custody, unless a continuance for a reasonable time is granted  
14 to a date certain, for good cause shown.

15 (d) *Department action upon filing of the petition.* -- At the time of the institution of any  
16 proceeding under this article, the department shall provide supportive services in an effort to remedy  
17 circumstances detrimental to a child.

18 (e) *Notice of hearing.* --

19 (1) The petition and notice of the hearing shall be served upon both parents and any other  
20 custodian, giving to the parents or custodian at least five days' actual notice of a preliminary hearing  
21 and at least ten days' notice of any other hearing.

22 (2) Notice shall be given to the department, any foster or preadoptive parent, and any relative



1 providing care for the child.

2 (3) In cases where personal service within West Virginia cannot be obtained after due  
3 diligence upon any parent or other custodian, a copy of the petition and notice of the hearing shall  
4 be mailed to the person by certified mail, addressee only, return receipt requested, to the last known  
5 address of the person. If the person signs the certificate, service shall be complete and the certificate  
6 shall be filed as proof of the service with the clerk of the circuit court.

7 (4) If service cannot be obtained by personal service or by certified mail, notice shall be by  
8 publication as a Class II legal advertisement in compliance with article three, chapter fifty-nine of  
9 this code.

10 (5) A notice of hearing shall specify the time and place of the hearing, the right to counsel  
11 of the child and parents or other custodians at every stage of the proceedings and the fact that the  
12 proceedings can result in the permanent termination of the parental rights.

13 (6) Failure to object to defects in the petition and notice may not be construed as a waiver.

14 (f) *Right to counsel.* --

15 (1) In any proceeding under this article, the child, his or her parents and his or her legally  
16 established custodian or other persons standing in *loco parentis* to him or her has the right to be  
17 represented by counsel at every stage of the proceedings and shall be informed by the court of their  
18 right to be so represented and that if they cannot pay for the services of counsel, that counsel will be  
19 appointed.

20 (2) Counsel shall be appointed in the initial order. For parents, legal guardians, and other  
21 persons standing in *loco parentis*, the representation may only continue after the first appearance if  
22 the parent or other persons standing in *loco parentis* cannot pay for the services of counsel.

1           (3) Counsel for other parties shall only be appointed upon request for appointment of counsel.  
2 If the requesting parties have not retained counsel and cannot pay for the services of counsel, the  
3 court shall, by order entered of record, appoint an attorney or attorneys to represent the other party  
4 or parties and so inform the parties.

5           (4) Under no circumstances may the same attorney represent both the child and the other  
6 party or parties, nor may the same attorney represent both parents or custodians. However, one  
7 attorney may represent both parents or custodians where both parents or guardians consent to this  
8 representation after the attorney fully discloses to the client the possible conflict and where the  
9 attorney assures the court that she or he is able to represent each client without impairing her or his  
10 professional judgment; however, if more than one child from a family is involved in the proceeding,  
11 one attorney may represent all the children.

12           (5) A parent who is a copetitioner is entitled to his or her own attorney. The court may allow  
13 to each attorney so appointed a fee in the same amount which appointed counsel can receive in  
14 felony cases.

15           (g) *Continuing education for counsel.* -- Any attorney representing a party under this article  
16 shall receive a minimum of eight hours of continuing legal education training per reporting period  
17 on child abuse and neglect procedure and practice. In addition to this requirement, any attorney  
18 appointed to represent a child must first complete training on representation of children that is  
19 approved by the administrative office of the Supreme Court of Appeals. The Supreme Court of  
20 Appeals shall develop procedures for approval and certification of training required under this  
21 section. Where no attorney has completed the training required by this subsection, the court shall  
22 appoint a competent attorney with demonstrated knowledge of child welfare law to represent the

1 parent or child. Any attorney appointed pursuant to this section shall perform all duties required of  
2 an attorney licensed to practice law in the State of West Virginia.

3 (h) *Right to be heard.* -- In any proceeding pursuant to this article, the party or parties having  
4 custodial or other parental rights or responsibilities to the child shall be afforded a meaningful  
5 opportunity to be heard, including the opportunity to testify and to present and cross-examine  
6 witnesses. Foster parents, preadoptive parents, and relative caregivers shall also have a meaningful  
7 opportunity to be heard.

8 (i) *Findings of the court.* -- Where relevant, the court shall consider the efforts of the  
9 department to remedy the alleged circumstances. At the conclusion of the adjudicatory hearing, the  
10 court shall make a determination based upon the evidence and shall make findings of fact and  
11 conclusions of law as to whether the child is abused or neglected and whether the respondent is  
12 abusing, neglecting, or, if applicable, a battered parent, all of which shall be incorporated into the  
13 order of the court. The findings must be based upon conditions existing at the time of the filing of  
14 the petition and proven by clear and convincing evidence.

15 (j) *Priority of proceedings.* -- Any petition filed and any proceeding held under this article  
16 shall, to the extent practicable, be given priority over any other civil action before the court, except  
17 proceedings under section three hundred nine, article twenty-seven, chapter forty-eight of this code  
18 and actions in which trial is in progress. Any petition filed under this article shall be docketed  
19 immediately upon filing. Any hearing to be held at the end of an improvement period and any other  
20 hearing to be held during any proceedings under this article shall be held as nearly as practicable on  
21 successive days and, with respect to the hearing to be held at the end of an improvement period, shall  
22 be held as close in time as possible after the end of the improvement period and shall be held within

1 thirty days of the termination of the improvement period.

2 (k) *Procedural safeguards.* -- The petition may not be taken as confessed. A transcript or  
3 recording shall be made of all proceedings unless waived by all parties to the proceeding. The rules  
4 of evidence shall apply. Following the court's determination, it shall be inquired of the parents or  
5 custodians whether or not appeal is desired and the response transcribed. A negative response may  
6 not be construed as a waiver. The evidence shall be transcribed and made available to the parties or  
7 their counsel as soon as practicable, if the same is required for purposes of further proceedings. If  
8 an indigent person intends to pursue further proceedings, the court reporter shall furnish a transcript  
9 of the hearing without cost to the indigent person if an affidavit is filed stating that he or she cannot  
10 pay therefor.

11 **§49-4-602. Petition to court when child believed neglected or abused; temporary care,  
12 custody, and control of child at different stages of proceeding; temporary  
13 care; orders; emergency removal; when reasonable efforts to preserve family  
14 are unnecessary.**

15 (a) (1) *Temporary care, custody, and control upon filing of the petition.* -- Upon the filing  
16 of a petition, the court may order that the child alleged to be an abused or neglected child be  
17 delivered for not more than ten days into the care, custody, and control of the department or a  
18 responsible person who is not the custodial parent or guardian of the child, if it finds that:

19 (A) There exists imminent danger to the physical well-being of the child; and

20 (B) There are no reasonably available alternatives to removal of the child, including, but not  
21 limited to, the provision of medical, psychiatric, psychological or homemaking services in the child's  
22 present custody.

1           (2) Where the alleged abusing person, if known, is a member of a household, the court shall  
2 not allow placement pursuant to this section of the child or children in the home unless the alleged  
3 abusing person is or has been precluded from visiting or residing in the home by judicial order.

4           (3) In a case where there is more than one child in the home, or in the temporary care, custody  
5 or control of the alleged offending parent, the petition shall so state. Notwithstanding the fact that  
6 the allegations of abuse or neglect may pertain to less than all of those children, each child in the  
7 home for whom relief is sought shall be made a party to the proceeding. Even though the acts of  
8 abuse or neglect alleged in the petition were not directed against a specific child who is named in  
9 the petition, the court shall order the removal of the child, pending final disposition, if it finds that  
10 there exists imminent danger to the physical well-being of the child and a lack of reasonable  
11 available alternatives to removal.

12           (4) The initial order directing custody shall contain an order appointing counsel and  
13 scheduling the preliminary hearing, and upon its service shall require the immediate transfer of care,  
14 custody, and control of the child or children to the department or a responsible relative, which may  
15 include any parent, guardian, or other custodian. The court order shall state:

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

17           (B) Whether or not the department made reasonable efforts to preserve the family and prevent  
18 the placement or that the emergency situation made those efforts unreasonable or impossible. The  
19 order may also direct any party or the department to initiate or become involved in services to  
20 facilitate reunification of the family.

21           (b) *Temporary care, custody and control at preliminary hearing.* -- Whether or not the court  
22 orders immediate transfer of custody as provided in subsection (a) of this section, if the facts alleged

1 in the petition demonstrate to the court that there exists imminent danger to the child, the court may  
2 schedule a preliminary hearing giving the respondents at least five days' actual notice. If the court  
3 finds at the preliminary hearing that there are no alternatives less drastic than removal of the child  
4 and that a hearing on the petition cannot be scheduled in the interim period, the court may order that  
5 the child be delivered into the temporary care, custody, and control of the department or a  
6 responsible person or agency found by the court to be a fit and proper person for the temporary care  
7 of the child for a period not exceeding sixty days. The court order shall state:

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

10 (2) Whether or not the department made reasonable efforts to preserve the family and to  
11 prevent the child's removal from his or her home;

12 (3) Whether or not the department made reasonable efforts to preserve the family and to  
13 prevent the placement or that the emergency situation made those efforts unreasonable or impossible;

14 (4) Whether or not the department made reasonable accommodations in accordance with the  
15 Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*, to parents with disabilities in  
16 order to allow them meaningful access to reunification and family preservation services; and

17 (5) What efforts should be made by the department, if any, to facilitate the child's return  
18 home. If the court grants an improvement period as provided in section six hundred ten of this  
19 article, the sixty-day limit upon temporary custody is waived.

20 (c) *Emergency removal by department during pendency of case.* -- Regardless of whether  
21 the court has previously granted the department care and custody of a child, if the department takes  
22 physical custody of a child during the pendency of a child abuse and neglect case (also known as

1 removing the child) due to a change in circumstances and without a court order issued at the time  
2 of the removal, the department must immediately notify the court and a hearing shall take place  
3 within ten days to determine if there is imminent danger to the physical well-being of the child, and  
4 there is no reasonably available alternative to removal of the child. The court findings and order  
5 shall be consistent with subsections (a) and (b) of this section.

6 (d) *Situations when reasonable efforts to preserve the family are not required.* -- For  
7 purposes of the court's consideration of temporary custody pursuant to subsection (a), (b), or (c) of  
8 this section, the department is not required to make reasonable efforts to preserve the family if the  
9 court determines:

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

14 (2) The parent has:

15 (A) Committed murder of the child's other parent, guardian or custodian, another child of the  
16 parent or any other child residing in the same household or under the temporary or permanent  
17 custody of the parent;

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

21 (C) Attempted or conspired to commit murder or voluntary manslaughter or been an  
22 accessory before or after the fact to either crime;

1 (D) Committed unlawful or malicious wounding that results in serious bodily injury to the  
2 child, the child's other parent, guardian or custodian, to another child of the parent or any other child  
3 residing in the same household or under the temporary or permanent custody of the parent;

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

7 (F) Has been required by state or federal law to register with a sex offender registry, and the  
8 court has determined in consideration of the nature and circumstances surrounding the prior charges  
9 against that parent, that the child's interests would not be promoted by a preservation of the family;  
10 or

11 (3) The parental rights of the parent to another child have been terminated involuntarily.

12 **§49-4-603. Medical and mental examinations; limitation of evidence; probable cause;**  
13 **testimony; judge or referee.**

14 (a)(1) At any time during proceedings under this article the court may, upon its own motion  
15 or upon motion of the child or other parties, order the child or other parties to be examined by a  
16 physician, psychologist or psychiatrist, and may require testimony from the expert, subject to  
17 cross-examination and the rules of evidence.

18 (2) The court may not terminate parental or custodial rights of a party solely because the party  
19 refuses to submit to the examination, nor may the court hold a party in contempt for refusing to  
20 submit to an examination.

21 (3) The physician, psychologist or psychiatrist shall be allowed to testify as to the conclusions  
22 reached from hospital, medical, psychological or laboratory records provided the same are produced



1 at the hearing.

2 (4) If the child, parent or custodian is indigent, the witnesses shall be compensated out of the  
3 Treasury of the State, upon certificate of the court wherein the case is pending.

4 (5) No evidence acquired as a result of an examination of the parent or any other person  
5 having custody of the child may be used against the person in any subsequent criminal proceedings  
6 against the person.

7 (b) (1) If a person with authority to file a petition under this article shall have probable cause  
8 to believe that evidence exists that a child has been abused or neglected and that the evidence may  
9 be found by a medical examination, the person may apply to a judge or juvenile referee for an order  
10 to take the child into custody for delivery to a physician or hospital for examination.

11 (2) The application may be on forms prescribed by the Supreme Court of Appeals or prepared  
12 by the prosecuting attorney or the applicant, and shall set forth facts from which it may be  
13 determined that probable cause exists for the belief.

14 (3) Upon sworn testimony or other evidence as the judge or referee deems sufficient, the  
15 judge or referee may order any law-enforcement officer to take the child into custody and deliver the  
16 child to a physician or hospital for examination.

17 (4) If a referee issues an order the referee shall by telephonic communication have such order  
18 orally confirmed by a circuit judge of the circuit or an adjoining circuit who shall, on the next  
19 judicial day, enter an order of confirmation.

20 (5) Any child protection worker and the child's parents, guardians or custodians may  
21 accompany the officer for examination.

22 (6) After the examination the officer may return the child to the custody of his or her parent,

1 guardian or custodian, retain custody of the child or deliver custody to the state department until the  
2 end of the next judicial day, at which time the child shall be returned to the custody of his or her  
3 parent, guardian or custodian unless a petition has been filed and custody of the child has been  
4 transferred to the department under section six hundred two of this article.

5 **§49-4-604. Disposition of neglected or abused children; case plans; dispositions; factors to be**  
6 **considered; reunification; orders; alternative dispositions.**

7 (a) *Child and family case plans.* -- Following a determination pursuant to section six hundred  
8 two of this article wherein the court finds a child to be abused or neglected, the department shall file  
9 with the court a copy of the child's case plan, including the permanency plan for the child. The term  
10 "case plan" means a written document that includes, where applicable, the requirements of the family  
11 case plan as provided in section four hundred eight of this article and that also includes, at a  
12 minimum, the following:

13 (1) A description of the type of home or institution in which the child is to be placed,  
14 including a discussion of the appropriateness of the placement and how the agency which is  
15 responsible for the child plans to assure that the child receives proper care and that services are  
16 provided to the parents, child, and foster parents in order to improve the conditions that made the  
17 child unsafe in the care of his or her parent(s), including any reasonable accommodations in  
18 accordance with the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, to parents  
19 with disabilities in order to allow them meaningful access to reunification and family preservation  
20 services;

21 (2) A plan to facilitate the return of the child to his or her own home or the concurrent  
22 permanent placement of the child; and address the needs of the child while in relative or foster care,

1 including a discussion of the appropriateness of the services that have been provided to the child.

2           The term "permanency plan" refers to that part of the case plan which is designed to achieve  
3 a permanent home for the child in the least restrictive setting available. The plan must document  
4 efforts to ensure that the child is returned home within approximate time lines for reunification as  
5 set out in the plan. Reasonable efforts to place a child for adoption or with a legal guardian should  
6 be made at the same time, or concurrent with, reasonable efforts to prevent removal or to make it  
7 possible for a child to return to the care of his or her parent(s) safely. If reunification is not the  
8 permanency plan for the child, the plan must state why reunification is not appropriate and detail the  
9 alternative, concurrent permanent placement plans for the child to include approximate time lines  
10 for when the placement is expected to become a permanent placement. This case plan shall serve as  
11 the family case plan for parents of abused or neglected children. Copies of the child's case plan shall  
12 be sent to the child's attorney and parent, guardian or custodian or their counsel at least five days  
13 prior to the dispositional hearing. The court shall forthwith proceed to disposition giving both the  
14 petitioner and respondents an opportunity to be heard.

15           (b) *Disposition decisions.* -- The court shall give precedence to dispositions in the following  
16 sequence:

17           (1) Dismiss the petition;

18           (2) Refer the child, the abusing parent, the battered parent or other family members to a  
19 community agency for needed assistance and dismiss the petition;

20           (3) Return the child to his or her own home under supervision of the department;

21           (4) Order terms of supervision calculated to assist the child and any abusing parent or  
22 battered parent or parents or custodian which prescribe the manner of supervision and care of the

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

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

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

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

11 (C) Whether the department has made reasonable accommodations in accordance with the  
12 Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, to parents with disabilities in  
13 order to allow them meaningful access to reunification and family preservation services;

14 (D) What efforts were made or that the emergency situation made those efforts unreasonable  
15 or impossible; and

16 (E) The specific circumstances of the situation which made those efforts unreasonable if  
17 services were not offered by the department. The court order shall also determine under what  
18 circumstances the child's commitment to the department are to continue. Considerations pertinent  
19 to the determination include whether the child should:

20 (i) Be considered for legal guardianship;

21 (ii) Be considered for permanent placement with a fit and willing relative; or

22 (iii) Be placed in another planned permanent living arrangement, but only in cases where the

1 child has attained 16 years of age and the department has documented to the circuit court a  
2 compelling reason for determining that it would not be in the best interests of the child to follow one  
3 of the options set forth in subparagraphs (i) or (ii) of this paragraph. The court may order services  
4 to meet the special needs of the child. Whenever the court transfers custody of a youth to the  
5 department, an appropriate order of financial support by the parents or guardians shall be entered in  
6 accordance with part eight of this article; and

7 (6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or  
8 abuse can be substantially corrected in the near future and, when necessary for the welfare of the  
9 child, terminate the parental, custodial and guardianship rights and responsibilities of the abusing  
10 parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one,  
11 or, if not, to either the permanent guardianship of the department or a licensed child welfare agency.  
12 The court may award sole custody of the child to a nonabusing battered parent. If the court shall so  
13 find, then in fixing its dispositional order the court shall consider the following factors:

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

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

17 (C) Other factors as the court considers necessary and proper. Notwithstanding any other  
18 provision of this article, the court 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 the court regarding the permanent  
20 termination of parental rights. No adoption of a child shall take place until all proceedings for  
21 termination of parental rights under this article and appeals thereof are final. In determining whether  
22 or not parental rights should be terminated, the court shall consider the efforts made by the

1 department to provide remedial and reunification services to the parent. The court order shall state:

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

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

4 (iii) Whether or not the department made reasonable efforts, with the child's health and safety  
5 being the paramount concern, to preserve the family, or some portion thereof, and to prevent the  
6 placement or to eliminate the need for removing the child from the child's home and to make it  
7 possible for the child to safely return home, or that the emergency situation made those efforts  
8 unreasonable or impossible; and

9 (iv) Whether or not the department made reasonable efforts to preserve and reunify the  
10 family, or some portion thereof, including a description of what efforts were made or that those  
11 efforts were unreasonable due to specific circumstances.

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

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

19 (B) The parent has:

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

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

4 (iii) Attempted or conspired to commit murder or voluntary manslaughter or been an  
5 accessory before or after the fact to either crime;

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

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

12 (C) The parental rights of the parent to another child have been terminated involuntarily;

13 (D) A parent has been required by state or federal law to register with a sex offender registry,  
14 and the court has determined in consideration of the nature and circumstances surrounding the prior  
15 charges against that parent, that the child's interests would not be promoted by a preservation of the  
16 family.

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

21 (1) The abusing parent or parents have habitually abused or are addicted to alcohol,  
22 controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired

1 and the person or persons have not responded to or followed through the recommended and  
2 appropriate treatment which could have improved the capacity for adequate parental functioning;

3 (2) The abusing parent or parents have willfully refused or are presently unwilling to  
4 cooperate in the development of a 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 followed through with a  
7 reasonable family case plan or other rehabilitative efforts of social, medical, mental health or other  
8 rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced  
9 by the continuation or insubstantial diminution of conditions which threatened the health, welfare  
10 or life of the child;

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

12 (5) The abusing parent or parents have repeatedly or seriously injured the child physically  
13 or emotionally, or have sexually abused or sexually exploited the child, and the degree of family  
14 stress and the potential for further abuse and neglect are so great as to preclude the use of resources  
15 to mitigate or resolve family problems or assist the abusing parent or parents in fulfilling their  
16 responsibilities to the child;

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

21 (d) The court may, as an alternative disposition, allow the parents or custodians an  
22 improvement period not to exceed six months. During this period the court shall require the parent



1 to rectify the conditions upon which the determination was based. The court may order the child to  
2 be placed with the parents, or any person found to be a fit and proper person, for the temporary care  
3 of the child during the period. At the end of the period, the court shall hold a hearing to determine  
4 whether the conditions have been adequately improved and at the conclusion of the hearing shall  
5 make a further dispositional order in accordance with this section.

6 **§49-4-605. When department efforts to terminate parental rights are required.**

7 (a) Except as provided in subsection (b) of this section, the department shall file or join in  
8 a petition or otherwise seek a ruling in any pending proceeding to terminate parental rights:

9 (1) If a child has been in foster care for fifteen of the most recent twenty-two months as  
10 determined by the earlier of the date of the first judicial finding that the child is subjected to abuse  
11 or neglect or the date which is sixty days after the child is removed from the home;

12 (2) If a court has determined the child is abandoned, tortured, sexually abused, or chronically  
13 abused; or

14 (3) If a court has determined the parent has committed murder or voluntary manslaughter of  
15 another of his or her children, another child in the household, or the other parent of his or her  
16 children; has attempted or conspired to commit murder or voluntary manslaughter or has been an  
17 accessory before or after the fact of either crime; has committed unlawful or malicious wounding  
18 resulting in serious bodily injury to the child or to another of his or her children, another child in the  
19 household, or to the other parent of his or her children; or the parental rights of the parent to another  
20 child have been terminated involuntarily.

21 (b) The department may determine not to file a petition to terminate parental rights when:

22 (1) At the option of the department, the child has been placed permanently with a relative by

1 court order;

2 (2) The department has documented in the case plan made available for court review a  
3 compelling reason, including, but not limited to, the child's age and preference regarding termination  
4 or the child's placement in custody of the department based on any proceedings initiated under part  
5 seven of this article, that filing the petition would not be in the best interests of the child; or

6 (3) The department has not provided, when reasonable efforts to return a child to the family  
7 are required, the services to the child's family as the department deems necessary for the safe return  
8 of the child to the home.

9 **§49-4-606. Modification of dispositional orders; hearings; treatment team; unadopted**  
10 **children.**

11 (a) Upon motion of a child, a child's parent or custodian or the department alleging a change  
12 of circumstances requiring a different disposition, the court shall conduct a hearing pursuant to  
13 section six hundred four of this article and may modify a dispositional order if the court finds by  
14 clear and convincing evidence a material change of circumstances and that the modification is in the  
15 child's best interests. A dispositional order may not be modified after the child has been adopted,  
16 except as provided in subsections (b) and (c) of this section. Adequate and timely notice of any  
17 motion for modification shall be given to the child's counsel, counsel for the child's parent or  
18 custodian, the department and any person entitled to notice and the right to be heard. The circuit  
19 court of origin has exclusive jurisdiction over placement of the child, and the placement may not be  
20 disrupted or delayed by any administrative process of the department.

21 (b) If the child is removed or relinquished from an adoptive home or other permanent  
22 placement after the case has been dismissed, any party with notice thereof and the receiving agency

1 shall promptly report the matter to the circuit court of origin, the department and the child's counsel,  
2 and the court shall schedule a permanency hearing within sixty days of the report to the circuit court,  
3 with notice given to any appropriate parties and persons entitled to notice and the right to be heard.  
4 The department shall convene a multidisciplinary treatment team meeting within thirty days of the  
5 receipt of notice of permanent placement disruption.

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

11 **§49-4-607. Consensual termination of parental rights.**

12 An agreement of a natural parent in termination of parental rights are valid if made by a duly  
13 acknowledged writing, and entered into under circumstances free from duress and fraud. Where  
14 during the pendency of an abuse and neglect proceeding, a parent offers voluntarily relinquish of his  
15 or her parental rights, and the relinquishment is accepted by the circuit court, the relinquishment  
16 may, without further evidence, be used as the basis of an order of adjudication of abuse and neglect  
17 by that parent of his or her children.

18 **§49-4-608. Permanency hearing; frequency; transitional planning; out-of-state placements;**  
19 **findings; notice; permanent placement review.**

20 (a) *Permanency hearing when reasonable efforts are not required.* -- If the court finds,  
21 pursuant to this article, that the department is not required to make reasonable efforts to preserve the  
22 family, then, notwithstanding any other provision, a permanency hearing must be held within thirty

1 days following the entry of the court order so finding, and a permanent placement review hearing  
2 must be conducted at least once every ninety days thereafter until a permanent placement is achieved.

3 (b) *Permanency hearing every twelve months until permanency is achieved.* -- If, twelve  
4 months after receipt by the department or its authorized agent of physical care, custody, and control  
5 of a child either by a court-ordered placement or by a voluntary agreement, the department has not  
6 placed a child in an adoptive home; placed the child with a natural parent, placed the child in legal  
7 guardianship, or permanently placed the child with a fit and willing relative, the court shall hold a  
8 permanency hearing. The department shall file a progress report with the court detailing the efforts  
9 that have been made to place the child in a permanent home and copies of the child's case plan,  
10 including the permanency plan as defined in section two hundred one, article one, and section six  
11 hundred four, article four of this chapter. Copies of the report shall be sent to the parties and all  
12 persons entitled to notice and the right to be heard. The court shall schedule a hearing, giving notice  
13 and the right to be present to the child's attorney; the child; the child's parents; the child's guardians;  
14 the child's foster parents; any preadoptive parent or any relative providing care for the child; any  
15 person entitled to notice and the right to be heard; and other persons as the court may, in its  
16 discretion, direct. The child's presence may be waived by the child's attorney at the request of the  
17 child or if the child is younger than twelve years and would suffer emotional harm. The purpose of  
18 the hearing is to review the child's case, to determine whether and under what conditions the child's  
19 commitment to the department shall continue, to determine what efforts are necessary to provide the  
20 child with a permanent home, and to determine if the department has made reasonable efforts to  
21 finalize the permanency plan. The court shall conduct another permanency hearing within twelve  
22 months thereafter for each child who remains in the care, custody, and control of the department until

1 the child is placed in an adoptive home, returned to his or her parents, placed in legal guardianship,  
2 or permanently placed with a fit and willing relative.

3           (c) *Transitional planning for older children.* -- In the case of a child who has attained sixteen  
4 years of age, the court shall determine the services needed to assist the child to make the transition  
5 from foster care to independent living. The child's case plan should specify services aimed at  
6 transitioning the child into adulthood. When a child turns seventeen, or as soon as a child aged  
7 seventeen comes into a case, the department must immediately provide the child with assistance and  
8 support in developing a transition plan that is personalized at the direction of the child. The plan  
9 must include specific options on housing, health insurance, education, local opportunities for  
10 mentors, continuing support services, work force support, and employment services, and the plan  
11 should be as detailed as the child may elect. In addition to these requirements, when a child with  
12 special needs turns seventeen, or as soon as a child aged seventeen with special needs comes into  
13 a case, he or she is entitled to the appointment of a department adult services worker to the  
14 multidisciplinary treatment team and coordination between the multidisciplinary treatment team and  
15 other transition planning teams, such as special education individualized education planning (IEP)  
16 teams.

17           (d) *Out-of-state placements.* -- In any case in which the court decides to order the child placed  
18 in an out-of-state facility or program it shall set forth in the order directing the placement the reasons  
19 why the child was not placed in an in-state facility or program. If the child is to be placed with a  
20 relative or other responsible person out of state, the court shall use judicial leadership to help  
21 expedite the process under the Interstate Compact for the Placement of Children provided in part  
22 one, article seven of this chapter and the Uniform Child Custody Jurisdiction and Enforcement Act

1 provided in article twenty, chapter forty-eight of this code.

2 (e) *Findings in order.* – At the conclusion of the hearing the court shall, in accordance with  
3 the best interests of the child, enter an order containing all the appropriate findings. The court order  
4 shall state:

5 (1) Whether or not the department made reasonable efforts to preserve the family and to  
6 prevent out-of-home placement or that the specific situation made the effort unreasonable;

7 (2) Whether or not the department made reasonable efforts to finalize the permanency plan  
8 and concurrent plan for the child;

9 (3) The appropriateness of the child’s current placement, including its distance from the  
10 child's home and whether or not it is the least restrictive one (most family-like one) available;

11 (4) The appropriateness of the current educational setting and the proximity to the school in  
12 which the child is enrolled at the time of placement;

13 (5) Services required to meet the child's needs and achieve permanency; and

14 (6) In addition, in the case of any child for whom another planned permanent living  
15 arrangement is the permanency plan, the court shall (A) inquire of the child about the desired  
16 permanency outcome for the child; (B) make a judicial determination explaining why, as of the date  
17 of the hearing, another planned permanent living arrangement is the best permanency plan for the  
18 child; and, (C) provide in the court order compelling reasons why it continues to not be in the best  
19 interest of the child to (i) return home, (ii) be placed for adoption, (iii) be placed with a legal  
20 guardian, or (iv) be placed with a fit and willing relative.

21 (f) The department shall annually report to the court the current status of the placements of  
22 children in the care, custody and control of the state department who have not been adopted.

1 (g) The department shall file a report with the court in any case where any child in the  
2 custody of the state receives more than three placements in one year no later than thirty days after  
3 the third placement. This report shall be provided to all parties and persons entitled to notice and the  
4 right to be heard. Upon motion by any party, the court shall review these placements and determine  
5 what efforts are necessary to provide the child with a permanent home. No report may be provided  
6 to any parent or parent's attorney whose parental rights have been terminated pursuant to this article.

7 (h) The department shall give actual notice, in writing, to the court, the child, the child's  
8 attorney, the parents and the parents' attorney at least forty-eight hours prior to the move if this is a  
9 planned move, or within forty-eight hours of the next business day after the move if the child is in  
10 imminent danger in the child's current placement, except where the notification would endanger the  
11 child or the foster family. A multidisciplinary treatment team shall convene as soon as practicable  
12 after notice to explore placement options. This requirement is not waived by placement of the child  
13 in a home or other residence maintained by a private provider. No notice may be provided pursuant  
14 to this provision to any parent or parent's attorney whose parental rights have been terminated  
15 pursuant to this article.

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

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

21 **§49-4-609. Conviction for offenses against children.**

22 In any case where a person is convicted of an offense against a child described in section

1 twelve, article eight, chapter sixty-one of this code or articles eight-b or eight-d of that chapter and  
2 the person has custodial, visitation or other parental rights to the child who is the victim of the  
3 offense or to any child who resides in the same household as the victim, the court shall, at the time  
4 of sentencing, find that the person is an abusing parent within the meaning of this chapter as to the  
5 child victim, and may find that the person is an abusing parent as to any child who resides in the  
6 same household as the victim, and the court shall take further steps as are required by this article.

7 **§49-4-610. Improvement periods in cases of child neglect or abuse; findings; orders;**  
8 **extensions; hearings; time limits.**

9 In any proceeding brought pursuant to this article, the court may grant any respondent an  
10 improvement period in accord with this article. During the period, the court may require temporary  
11 custody with a responsible person which has been found to be a fit and proper person for the  
12 temporary custody of the child or children or the state department or other agency during the  
13 improvement period. An order granting an improvement period shall require the department to  
14 prepare and submit to the court a family case plan in accordance with section four hundred eight, of  
15 this article. The types of improvement periods are as follows:

16 (1) *Preadjudicatory improvement period.* -- A court may grant a respondent an improvement  
17 period of a period not to exceed three months prior to making a finding that a child is abused or  
18 neglected pursuant to section six hundred one of this article only when:

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



1 (C) In the order granting the improvement period, the court:  
2 (i) Orders that a hearing be held to review the matter within sixty days of the granting of the  
3 improvement period; or  
4 (ii) Orders that a hearing be held to review the matter within ninety days of the granting of  
5 the improvement period and that the department submit a report as to the respondents progress in  
6 the improvement period within sixty days of the order granting the improvement period; and  
7 (D) The order granting the improvement period requires the department to prepare and  
8 submit to the court an individualized family case plan in accordance with section four hundred eight  
9 of this article;  
10 (2) *Post-adjudicatory improvement period.* -- After finding that a child is an abused or  
11 neglected child pursuant to section six hundred one of this article, a court may grant a respondent  
12 an improvement period of a period not to exceed six months when:  
13 (A) The respondent files a written motion requesting the improvement period;  
14 (B) The respondent demonstrates, by clear and convincing evidence, that the respondent is  
15 likely to fully participate in the 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 thirty days of the granting of the  
19 improvement period; or  
20 (ii) orders that a hearing be held to review the matter within ninety days of the granting of  
21 the improvement period and that the department submit a report as to the respondent's progress in  
22 the improvement period within sixty days of the order granting the improvement period;

1 (D) Since the initiation of the proceeding, the respondent has not previously been granted any  
2 improvement period or the respondent demonstrates that since the initial improvement period, the  
3 respondent has experienced a substantial change in circumstances. Further, the respondent shall  
4 demonstrate that due to that change in circumstances the respondent is likely to fully participate in  
5 a further improvement period; and

6 (E) The order granting the improvement period requires the department to prepare and submit  
7 to the court an individualized family case plan in accordance with section four hundred eight of this  
8 article.

9 (3) *Post-dispositional improvement period.* – The court may grant an improvement period  
10 not to exceed six months as a disposition pursuant to section six hundred four of this article when:

11 (A) The respondent moves in writing for the improvement period;

12 (B) The respondent demonstrates, by clear and convincing evidence, that the respondent is  
13 likely to fully participate in the improvement period and the court further makes a finding, on the  
14 record, of the terms of the improvement period;

15 (C) In the order granting the improvement period, the court:

16 (i) Orders that a hearing be held to review the matter within sixty days of the granting of the  
17 improvement period; or

18 (ii) Orders that a hearing be held to review the matter within ninety days of the granting of  
19 the improvement period and that the department submit a report as to the respondent's progress in  
20 the improvement period within sixty days of the order granting the improvement period;

21 (D) Since the initiation of the proceeding, the respondent has not previously been granted any  
22 improvement period or the respondent demonstrates that since the initial improvement period, the

1 respondent has experienced a substantial change in circumstances. Further, the respondent shall  
2 demonstrate that due to that change in circumstances, the respondent is likely to fully participate in  
3 the improvement period; and

4 (E) The order granting the improvement period shall require the department to prepare and  
5 submit to the court an individualized family case plan in accordance with section four hundred eight  
6 of this article.

7 (4) *Responsibilities of the respondent receiving improvement period.* --

8 (A) When any improvement period is granted to a respondent pursuant to this section, the  
9 respondent shall be responsible for the initiation and completion of all terms of the improvement  
10 period. The court may order the state department to pay expenses associated with the services  
11 provided during the improvement period when the respondent has demonstrated that he or she is  
12 unable to bear the expenses.

13 (B) When any improvement period is granted to a respondent pursuant to this section, the  
14 respondent shall execute a release of all medical information regarding that respondent, including,  
15 but not limited to, information provided by mental health and substance abuse professionals and  
16 facilities. The release shall be accepted by a professional or facility regardless of whether the release  
17 conforms to any standard required by that facility.

18 (5) *Responsibilities of the department during improvement period.* -- When any respondent  
19 is granted an improvement period pursuant to this article, the department shall monitor the progress  
20 of the person in the improvement period. This section may not be construed to prohibit a court from  
21 ordering a respondent to participate in services designed to reunify a family or to relieve the  
22 department of any duty to make reasonable efforts to reunify a family required by state or federal

1 law.

2           (6) *Extension of improvement period.* -- A court may extend any improvement period granted  
3 pursuant to subdivision (2) or (3) of this section for a period not to exceed three months when the  
4 court finds that the respondent has substantially complied with the terms of the improvement period;  
5 that the continuation of the improvement period will not substantially impair the ability of the  
6 department to permanently place the child; and that the extension is otherwise consistent with the  
7 best interest of the child.

8           (7) *Termination of improvement period.* -- Upon the motion by any party, the court shall  
9 terminate any improvement period granted pursuant to this section when the court finds that  
10 respondent has failed to fully participate in the terms of the improvement period or has satisfied the  
11 terms of the improvement period to correct any behavior alleged in the petition or amended petition  
12 to make his or her child unsafe.

13           (8) *Hearings on improvement period.* --

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

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

21           (9) *Time limit for improvement periods.* -- Notwithstanding any other provision of this  
22 section, no combination of any improvement periods or extensions thereto may cause a child to be

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

4 PART VII. JUVENILE PROCEEDINGS.

5 **§49-4-701. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts;**  
6 **constitutional guarantees; requirements; hearings; right to counsel;**  
7 **opportunity to be heard; evidence and transcripts.**

8 (a) The circuit court has original jurisdiction of proceedings brought under this article. A  
9 person under the age of eighteen years who appears before the circuit court in proceedings under this  
10 article is a ward of the court and protected accordingly.

11 (b) If during a criminal proceeding in any court it is ascertained or appears that the defendant  
12 is under the age of nineteen years and was under the age of eighteen years at the time of the alleged  
13 offense, the matter shall be immediately certified to the juvenile jurisdiction of the circuit court. The  
14 circuit court shall assume jurisdiction of the case in the same manner as cases which are originally  
15 instituted in the circuit court by petition.

16 (c) Notwithstanding any other provision of this article, magistrate courts have concurrent  
17 juvenile jurisdiction with the circuit court for a violation of a traffic law of West Virginia, for a  
18 violation of section nine, article six, chapter sixty, section three or section four, article nine-a, chapter  
19 sixteen, or section nineteen, article sixteen, chapter eleven of this code, or for any violation of  
20 chapter twenty of this code. Juveniles are liable for punishment for violations of these laws in the  
21 same manner as adults except that magistrate courts have no jurisdiction to impose a sentence of  
22 incarceration for the violation of these laws.

1 (d) Notwithstanding any other provision of this article, municipal courts have concurrent  
2 juvenile jurisdiction with the circuit court for a violation of any municipal ordinance regulating  
3 traffic, for any municipal curfew ordinance which is enforceable or for any municipal ordinance  
4 regulating or prohibiting public intoxication, drinking or possessing alcoholic liquor or  
5 nonintoxicating beer in public places, any other act prohibited by section nine, article six, chapter  
6 sixty or section nineteen, article sixteen, chapter eleven of this code or underage possession or use  
7 of tobacco or tobacco products, as provided in article nine-a, chapter sixteen of this code. Municipal  
8 courts may impose the same punishment for these violations as a circuit court exercising its juvenile  
9 jurisdiction could properly impose, except that municipal courts have no jurisdiction to impose a  
10 sentence of incarceration for the violation of these laws.

11 (e) A juvenile may be brought before the circuit court for proceedings under this article only  
12 by the following means:

13 (1) By a juvenile petition requesting that the juvenile be adjudicated as a status offender or  
14 a juvenile delinquent; or

15 (2) By certification or transfer to the juvenile jurisdiction of the circuit court from the  
16 criminal jurisdiction of the circuit court, from any foreign court, or from any magistrate court or  
17 municipal court in West Virginia.

18 (f)(1) If a juvenile commits an act which would be a crime if committed by an adult, and the  
19 juvenile is adjudicated delinquent for that act, the jurisdiction of the court which adjudged the  
20 juvenile delinquent continues until the juvenile becomes twenty-one years of age. The court has the  
21 same power over that person that it had before he or she became an adult, and has the power to  
22 sentence that person to a term of incarceration. Any term of incarceration may not exceed six

1 months. This authority does not preclude the court from exercising criminal jurisdiction over that  
2 person if he or she violates the law after becoming an adult or if the proceedings have been  
3 transferred to the court's criminal jurisdiction pursuant to section seven hundred four of this article.

4 (2) If a juvenile is adjudicated as a status offender because he or she is habitually absent from  
5 school without good cause, the jurisdiction of the court which adjudged the juvenile a status offender  
6 continues until either the juvenile becomes twenty-one years of age, completes high school,  
7 completes a high school equivalent or other education plan approved by the court, or the court  
8 otherwise voluntarily relinquishes jurisdiction, whichever occurs first. If the jurisdiction of the court  
9 is extended pursuant to this subdivision, the court has the same power over that person that it had  
10 before he or she became an adult. No person so adjudicated who has attained the age of nineteen  
11 may be ordered to attend school in a regular, nonalternative setting.

12 (g) A juvenile is entitled to be admitted to bail or recognizance in the same manner as an  
13 adult and be afforded the protection guaranteed by Article III of the West Virginia Constitution.

14 (h) A juvenile has the right to be effectively represented by counsel at all stages of  
15 proceedings under this article, including participation in multidisciplinary team meetings, until the  
16 child is no longer under the jurisdiction of the court. If the juvenile or the juvenile's parent or  
17 custodian executes an affidavit showing that the juvenile cannot afford an attorney, the court shall  
18 appoint an attorney, who shall be paid in accordance with article twenty-one, chapter twenty-nine  
19 of this code.

20 (i)(1) In all proceedings under this article, the juvenile will be afforded a meaningful  
21 opportunity to be heard. This includes the opportunity to testify and to present and cross-examine  
22 witnesses. The general public shall be excluded from all proceedings under this article except that

1 persons whose presence is requested by the parties and other persons whom the circuit court  
2 determines have a legitimate interest in the proceedings may attend.

3 (2) In cases in which a juvenile is accused of committing what would be a felony if the  
4 juvenile were an adult, an alleged victim or his or her representative may attend any related juvenile  
5 proceedings, at the discretion of the presiding judicial officer.

6 (3) In any case in which the alleged victim is a juvenile, he or she may be accompanied by  
7 his or her parents or representative, at the discretion of the presiding judicial officer.

8 (j) At all adjudicatory hearings held under this article, all procedural rights afforded to adults  
9 in criminal proceedings shall be afforded the juvenile unless specifically provided otherwise in this  
10 chapter.

11 (k) At all adjudicatory hearings held under this article, the rules of evidence applicable in  
12 criminal cases apply, including the rule against written reports based upon hearsay.

13 (l) Except for res gestae, extrajudicial statements made by a juvenile who has not attained  
14 fourteen years of age to law-enforcement officials or while in custody are not admissible unless those  
15 statements were made in the presence of the juvenile's counsel. Except for res gestae, extrajudicial  
16 statements made by a juvenile who has not attained sixteen years of age but who is at least fourteen  
17 years of age to law-enforcement officers or while in custody, are not admissible unless made in the  
18 presence of the juvenile's counsel or made in the presence of, and with the consent of, the juvenile's  
19 parent or custodian, and the parent or custodian has been fully informed regarding the juvenile's right  
20 to a prompt detention hearing, the juvenile's right to counsel, including appointed counsel if the  
21 juvenile cannot afford counsel, and the juvenile's privilege against self-incrimination.

22 (m) A transcript or recording shall be made of all transfer, adjudicatory and dispositional



1 hearings held in circuit court. At the conclusion of each of these hearings, the circuit court shall  
2 make findings of fact and conclusions of law, both of which shall appear on the record. The court  
3 reporter shall furnish a transcript of the proceedings at no charge to any indigent juvenile who seeks  
4 review of any proceeding under this article if an affidavit is filed stating that neither the juvenile nor  
5 the juvenile's parents or custodian have the ability to pay for the transcript.

6 **§49-4-702. Prepetition interventions; court referrals; probation officers; giving of counsel.**

7 (a) Before a juvenile petition is formally filed with the court, the court may refer the matter  
8 to a state department worker or probation officer for preliminary inquiry to determine whether the  
9 matter can be resolved informally without the formal filing of a petition with the court.

10 (b) The court at any time, or the department or other official upon a request from a parent,  
11 guardian or custodian, may, before proceedings under this article are formally instituted by the filing  
12 of a petition with the court, refer a juvenile alleged to be delinquent or a status offender to a  
13 counselor at the department or a community mental health center, or other professional counselor  
14 in the community. In the event the juvenile refuses to respond to this referral, the department may  
15 serve a notice by first class mail or personal service of process upon the juvenile, setting forth the  
16 facts and stating that a noncustodial order will be sought from the court directing the juvenile to  
17 submit to counseling. The notice shall set forth the time and place for the hearing on the matter. The  
18 court after a hearing may direct the juvenile to participate in a noncustodial period of counseling that  
19 may not exceed six months. Upon recommendation of the department or request by the juvenile's  
20 parent, custodian or guardian, the court may allow or require the parent, custodian or guardian to  
21 participate in this noncustodial counseling. No information obtained as the result of this counseling  
22 is admissible in a subsequent proceeding under this article.

1 (c) Before a petition is formally filed with the court, the probation officer or other officer of  
2 the court designated by it, subject to its direction, may give counsel and advice to the parties with  
3 a view to an informal adjustment period if it appears:

4 (1) The admitted facts bring the case within the jurisdiction of the court;

5 (2) Counsel and advice without an adjudication would be in the best interest of the public and  
6 the juvenile; and

7 (3) The juvenile and his or her parents, guardian or other custodian consent thereto with  
8 knowledge that consent is not obligatory.

9 (d) The giving of counsel and advice pursuant to this section may not continue longer than  
10 six months from the day it is commenced unless extended by the court for an additional period not  
11 to exceed six months.

12 **§49-4-703. Juvenile drug courts; hearing officers.**

13 Juvenile drug courts shall be designed and operated consistent with the developmental and  
14 rehabilitative needs of juveniles as defined in this article. The Supreme Court shall provide uniform  
15 referral, procedure and order forms that shall be used in juvenile drug courts. The Supreme Court  
16 is further authorized to appoint appropriate hearing officers in those jurisdictions which choose to  
17 operate a juvenile drug court. Hearing officers for juvenile drug courts shall be limited to current or  
18 senior status circuit court judges or family court judges.

19 **§49-4-704. Institution of proceedings by petition; notice to juvenile and parents; preliminary**  
20 **hearings; subpoena.**

21 (a)(1) A petition alleging that a juvenile is a status offender or a juvenile delinquent may be  
22 filed by a person who has knowledge of or information concerning the facts alleged. The petition

1 shall be verified by the petitioner, shall set forth the name and address of the juvenile's parents,  
2 guardians or custodians, if known to the petitioner, and shall be filed in the circuit court in the county  
3 where the alleged status offense or act of delinquency occurred. However, a proceeding under this  
4 chapter may be removed, for good cause shown, in accordance with section one, article nine, chapter  
5 fifty-six of this code. The petition shall contain specific allegations of the conduct and facts upon  
6 which the petition is based, including the approximate time and place of the alleged conduct; a  
7 statement of the right to have counsel appointed and consult with counsel at every stage of the  
8 proceedings; and the relief sought.

9           (2) Upon the filing of the petition, the court shall set a time and place for a preliminary  
10 hearing and may appoint counsel. A copy of the petition and summons may be served upon the  
11 respondent juvenile by first class mail or personal service of process. If a juvenile does not appear  
12 in response to a summons served by mail, no further proceeding may be held until the juvenile is  
13 served a copy of the petition and summons by personal service of process. If a juvenile fails to  
14 appear in response to a summons served in person upon him or her, an order of arrest may be issued  
15 by the court for that reason alone.

16           (b) The parents, guardians or custodians shall be named in the petition as respondents and  
17 shall be served with notice of the proceedings in the same manner as provided in subsection (a) of  
18 this section for service upon the juvenile and required to appear with the juvenile at the time and  
19 place set for the proceedings unless the respondent cannot be found after diligent search. If a  
20 respondent cannot be found after diligent search, the court may proceed without further requirement  
21 of notice. However, the court may order service by first class mail to the last known address of the  
22 respondent. The respondent shall be afforded fifteen days after the date of mailing to appear or

1 answer.

2 (c) The court or referee may order the issuance of a subpoena against the person having  
3 custody and control of the juvenile ordering him or her to bring the juvenile before the court.

4 (d) When any case of a juvenile charged with the commission of a crime is certified or  
5 transferred to the circuit court, the court shall forthwith cause the juvenile and his or her parents,  
6 guardians or custodians to be served with a petition as provided in subsections (a) and (b) of this  
7 section. In the event the juvenile is in custody, the petition shall be served upon the juvenile within  
8 ninety-six hours of the time custody began and if the petition is not served within that time, the  
9 juvenile shall be released forthwith.

10 (e) The clerk of the court shall notify, within two judicial days, the local office of the  
11 Department of Health and Human Resources of all proceedings under this article, which is  
12 responsible for convening and directing the multidisciplinary treatment planning process in  
13 accordance with section four hundred six of this article. In status offense or delinquency cases where  
14 a case manager has not been assigned, the juvenile probation officer is responsible for notifying the  
15 local office of the Department of Health and Human Services which will assign a case manager who  
16 will initiate assessment and be responsible for convening and directing the multidisciplinary  
17 treatment planning process.

18 (f) Notwithstanding any other provision of this code to the contrary, a petition filed pursuant  
19 to section four hundred three, article twenty-seven, chapter forty-eight of this code in which the  
20 petition for the emergency protective order is filed by or on behalf of the juvenile's parent, guardian  
21 or custodian or other person with whom the juvenile resides and that results in the issuance of an  
22 emergency protective order naming a juvenile as the respondent, shall be treated as a petition

1 authorized by this section, alleging the juvenile is a juvenile delinquent. However, the magistrate  
2 court shall notify the prosecuting attorney in the county where the emergency protective order is  
3 issued within twenty-four hours of the issuance of the emergency protective order and the  
4 prosecuting attorney may file an amended verified petition to comply with subsection (a) of this  
5 section within two judicial days.

6 **§49-4-705. Taking a juvenile into custody; requirements; existing conditions; detention**  
7 **centers; medical aid.**

8 (a) In proceedings formally instituted by the filing of a juvenile petition, the circuit court or  
9 a magistrate may issue an order directing that a juvenile be taken into custody before adjudication  
10 only upon a showing of probable cause to believe that one of the following conditions exists: (1) The  
11 petition shows that grounds exist for the arrest of an adult in identical circumstances; (2) the health,  
12 safety and welfare of the juvenile demand custody; (3) the juvenile is a fugitive from a lawful  
13 custody or commitment order of a juvenile court; or (4) the juvenile is alleged to be a juvenile  
14 delinquent with a record of willful failure to appear at juvenile proceedings and custody is necessary  
15 to assure his or her presence before the court. A detention hearing pursuant to section seven hundred  
16 six of this article shall be held by the judge or magistrate authorized to conduct the hearings without  
17 unnecessary delay and in no event may any delay exceed the next day.

18 (b) Absent a court order, a juvenile may be taken into custody by a law-enforcement official  
19 only if one of the following conditions exists:

- 20 (1) Grounds exist for the arrest of an adult in identical circumstances;
- 21 (2) Emergency conditions exist which, in the judgment of the officer, pose imminent danger  
22 to the health, safety and welfare of the juvenile;

1           (3) The official has reasonable grounds to believe that the juvenile has left the care of his or  
2 her parents, guardian or custodian without the consent of the person and the health, safety and  
3 welfare of the juvenile is endangered;

4           (4) The juvenile is a fugitive from a lawful custody or commitment order of a juvenile court;

5           (5) The official has reasonable grounds to believe the juvenile to have been driving a motor  
6 vehicle with any amount of alcohol in his or her blood; or

7           (6) The juvenile is the named respondent in an emergency domestic violence protective order  
8 issued pursuant to section four hundred three, article twenty-seven, chapter forty-eight of this code  
9 and the individual filing the petition for the emergency protective order is the juvenile's parent,  
10 guardian or custodian or other person with whom the juvenile resides.

11           (c) Upon taking a juvenile into custody, with or without a court order, the official shall:

12           (1) Immediately notify the juvenile's parent, guardian, custodian or, if the parent, guardian  
13 or custodian cannot be located, a close relative;

14           (2) Release the juvenile into the custody of his or her parent, guardian or custodian unless:

15           (A) Circumstances present an immediate threat of serious bodily harm to the juvenile if  
16 released;

17           (B) No responsible adult can be found into whose custody the juvenile can be delivered. Each  
18 day the juvenile is detained, a written record must be made of all attempts to locate a responsible  
19 adult; or

20           (C) The juvenile has been taken into custody for an alleged act of delinquency for which  
21 secure detention is permissible.

22           (3) If the juvenile is an alleged status offender or has been taken into custody pursuant to

1 subdivision (6), subsection (b) of this section, immediately notify the Department of Health and  
2 Human Resources and, if the circumstances of either paragraph (A) or (B), subdivision (2) of this  
3 subsection exist and the requirements therein are met, the official may detain the juvenile, but only  
4 in a nonsecure or staff-secure facility;

5 (4) Take the juvenile without unnecessary delay before a judge of the circuit court for a  
6 detention hearing pursuant to section seven hundred six of this article. If a circuit court judge is not  
7 available in the county, the official shall take the juvenile without unnecessary delay before any  
8 magistrate available in the county for the sole purpose of conducting the detention hearing. In no  
9 event may any delay in presenting the juvenile for a detention hearing exceed the next day after he  
10 or she is taken into custody.

11 (d) In the event that a juvenile is delivered into the custody of a sheriff or director of a  
12 detention facility, the sheriff or director shall immediately notify the sheriff or director shall  
13 immediately provide to every juvenile who is delivered into his or her custody a written statement  
14 explaining the juvenile's right to a prompt detention hearing, his or her right to counsel, including  
15 appointed counsel if he or she cannot afford counsel, and his or her privilege against  
16 self-incrimination. In all cases when a juvenile is delivered into a sheriff's or detention center  
17 director's custody, that official shall release the juvenile to his or her parent, guardian or custodian  
18 by the end of the next day unless the juvenile has been placed in detention after a hearing conducted  
19 pursuant to section seven hundred six of this article.

20 (e) The law-enforcement agency that takes a juvenile into custody or places a juvenile under  
21 arrest is responsible for the juvenile's initial transportation to a juvenile detention center or other  
22 Division of Juvenile Services' residential facility.

1 (f) Notwithstanding any other provision of this code, a juvenile detention center, or other  
2 Division of Juvenile Services' residential facility, is not required to accept a juvenile if the juvenile  
3 appears to be in need of medical attention of a degree necessitating treatment by a physician. If a  
4 juvenile is refused pursuant to this subsection, the juvenile detention center, or other Division of  
5 Juvenile Services' residential facility, may not subsequently accept the juvenile for detention until  
6 the arresting or transporting officer provides the juvenile detention center, or other Division of  
7 Juvenile Services' residential facility, with a written clearance from a licensed physician reflecting  
8 that the juvenile has been examined and, if necessary, treated and which states that in the physician's  
9 medical opinion the juvenile can be safely confined in the juvenile detention center or other Division  
10 of Juvenile Services' residential facility.

11 **§49-4-706. Detention hearing; rights of juvenile; notification; counsel; hearings.**

12 (a) The circuit court judge or magistrate shall inform the juvenile of his or her right to remain  
13 silent, that any statement may be used against him or her and of his or her right to counsel, and no  
14 interrogation may be made without the presence of a parent or counsel. If the juvenile or his or her  
15 parent, guardian or custodian has not retained counsel, counsel shall be appointed as soon as  
16 practicable. The circuit court judge or magistrate shall hear testimony concerning the circumstances  
17 for taking the juvenile into custody and the possible need for detention. The sole mandatory issue  
18 at the detention hearing is whether the juvenile should be detained pending further court proceedings.  
19 The court shall, if the health, safety and welfare of the juvenile will not be endangered thereby,  
20 release the juvenile on recognizance to his or her parents, custodians or an appropriate agency;  
21 however, if warranted, the court may require bail, except that bail may be denied in any case where  
22 bail could be denied if the accused were an adult. The court shall:



1 (1) Immediately notify the juvenile's parent, guardian or custodian or, if the parent, guardian  
2 or custodian cannot be located, a close relative;

3 (2) Release the juvenile into the custody of his or her parent, guardian or custodian unless:

4 (A) Circumstances present an immediate threat of serious bodily harm to the juvenile if  
5 released;

6 (B) No responsible adult can be found into whose custody the juvenile can be delivered.  
7 However, each day the juvenile is detained, a written record must be made of all attempts to locate  
8 a responsible adult; or

9 (C) The juvenile is charged with an act of delinquency for which secure detention is  
10 permissible; and

11 (3) If the juvenile is an alleged status offender, immediately notify the Department of Health  
12 and Human Resources, and, if the circumstances of either paragraph (A) or (B), subdivision (2) of  
13 this subsection exist and the requirements therein are met, the court may order the juvenile detained,  
14 but only in a nonsecure or staff-secure facility. Any juvenile detained pursuant to this subdivision  
15 shall be placed in the legal custody of the Department of Health and Human Resources pending  
16 further proceedings by the court.

17 (b) The circuit court judge or magistrate may, in conjunction with the detention hearing,  
18 conduct a preliminary hearing pursuant to section seven hundred and four of this article if all the  
19 parties are prepared to proceed and the juvenile has counsel during the hearing.

20 **49-4-707. Review of order following detention hearing.**

21 Upon the application of any person in interest or on his or her own motion, a circuit court  
22 judge may modify or vacate any order entered in his or her court after a detention hearing and enter

1 the order as to detention, or release from detention, as he or she deems just and proper.

2 **§49-4-708. Preliminary hearing; counsel; custody; court requirements; preadjudicatory**  
3 **community supervision period.**

4 (a) Following the filing of a juvenile petition, unless a preliminary hearing has previously  
5 been held in conjunction with a detention hearing with respect to the same charge contained in the  
6 petition, the circuit court judge or magistrate shall hold a preliminary hearing. In the event that the  
7 juvenile is being detained, the hearing shall be held within ten days of the time the juvenile is placed  
8 in detention unless good cause is shown for a continuance. If no preliminary hearing is held within  
9 ten days of the time the juvenile is placed in detention, the juvenile shall be released on recognizance  
10 unless the hearing has been continued for good cause. If the judge is in another county in the circuit,  
11 the hearing may be conducted in that other county or by video conferencing. Written notice shall  
12 be provided to all parties of the availability to participate by videoconferencing. The preliminary  
13 hearing may be waived by the juvenile, upon advice of counsel. At the hearing, the circuit court  
14 judge or magistrate shall:

15 (1) If the juvenile is not represented by counsel, inform the juvenile and his or her parents,  
16 guardian or custodian or any other person standing in loco parentis to him or her of the juvenile's  
17 right to be represented at all stages of proceedings under this article and the right to have counsel  
18 appointed;

19 (2) Appoint counsel by order entered of record, if counsel has not already been retained, or  
20 appointed. Counsel must represent the child until he or she is no longer under the jurisdiction of the  
21 court;

22 (3) Determine after hearing if there is probable cause to believe that the juvenile is a status

1 offender or a juvenile delinquent. If probable cause is not found, the juvenile, if in detention, shall  
2 be released and the proceedings dismissed. If probable cause is found, the case shall proceed to  
3 adjudication. At this hearing or as soon thereafter as is practicable, the date for the adjudicatory  
4 hearing shall be set to give the juvenile and the juvenile's parents and attorney at least ten days'  
5 notice unless notice is waived by all parties;

6 (4) In lieu of placing the juvenile in a detention facility, the court may place the juvenile in  
7 the temporary legal and/or physical custody of the department. If the juvenile is detained, the  
8 detention may not continue longer than thirty days without commencement of the adjudicatory  
9 hearing unless good cause for a continuance is shown by either party or, if a jury trial is demanded,  
10 no longer than the next regular term of the court. A juvenile who is alleged to be a status offender  
11 may not be placed in a secure detention facility; and

12 (5) Inform the juvenile of the right to demand a jury trial.

13 (b) The juvenile may move to be allowed a preadjudicatory community supervision period  
14 not to exceed one year. If the court is satisfied that the best interest of the juvenile is likely to be  
15 served by a preadjudicatory community supervision period, the court may delay the adjudicatory  
16 hearing and allow a preadjudicatory community supervision period upon terms calculated to serve  
17 the rehabilitative needs of the juvenile. At the conclusion of the preadjudicatory community  
18 supervision period, the court shall dismiss the proceeding if the terms have been fulfilled; otherwise,  
19 the court shall proceed to the adjudicatory stage. A motion for a pre-adjudicatory community  
20 supervision period, may not be construed as an admission or be used as evidence. Preadjudicatory  
21 community supervision periods authorized by this subsection may be, in the court's discretion, either  
22 custodial or noncustodial.

1 **§49-4-709. Right to jury trial for juveniles; inapplicability.**

2 (a) In a proceeding under this article, the juvenile, the juvenile's counsel or the juvenile's  
3 parent or guardian may demand, or the judge on his or her own motion may order a jury trial on any  
4 question of fact, in which the juvenile is accused of any act or acts of delinquency which, if  
5 committed by an adult would expose the adult to incarceration.

6 (b) A juvenile who is charged with a status offense or other offense where incarceration is  
7 not a possibility due either to the statutory penalty or where the court rules pretrial that a sentence  
8 of incarceration will not be imposed upon adjudication is not entitled to a trial by jury.

9 (c) This section is inapplicable to proceedings held pursuant to section one hundred seventeen  
10 of this article.

11 (d) Juries consist of twelve members.

12 **§49-4-710. Waiver and transfer of jurisdiction.**

13 (a) Upon written motion of the prosecuting attorney filed at least eight days prior to the  
14 adjudicatory hearing and with reasonable notice to the juvenile, his or her counsel, and his or her  
15 parents, guardians or custodians, the court shall conduct a hearing to determine if juvenile  
16 jurisdiction should or must be waived and the proceeding transferred to the criminal jurisdiction of  
17 the court. Any motion filed in accordance with this section is to state, with particularity, the grounds  
18 for the requested transfer, including the grounds relied upon as set forth in subsection (d), (e), (f) or  
19 (g) of this section, and the burden is upon the state to establish the grounds by clear and convincing  
20 evidence. Any hearing held under this section is to be held within seven days of the filing of the  
21 motion for transfer unless it is continued for good cause.

22 (b) No inquiry relative to admission or denial of the allegations of the charge or the demand

1 for jury trial may be made by or before the court until the court has determined whether the  
2 proceeding is to be transferred to criminal jurisdiction.

3 (c) The court shall transfer a juvenile proceeding to criminal jurisdiction if a juvenile who  
4 has attained the age of fourteen years makes a demand on the record to be transferred to the criminal  
5 jurisdiction of the court. The case may then be referred to magistrate or circuit court for further  
6 proceedings, subject to the court's jurisdiction.

7 (d) The court shall transfer a juvenile proceeding to criminal jurisdiction if there is probable  
8 cause to believe that:

9 (1) The juvenile is at least fourteen years of age and has committed the crime of treason under  
10 section one, article one, chapter sixty-one of this code; the crime of murder under sections one, two  
11 and three, article two of that chapter; the crime of robbery involving the use or presenting of firearms  
12 or other deadly weapons under section twelve, article two of that chapter; the crime of kidnapping  
13 under section fourteen-a of article two of that chapter; the crime of first degree arson under section  
14 one, article three of that chapter; or the crime of sexual assault in the first degree under section three,  
15 article eight-b of that chapter;

16 (2) The juvenile is at least fourteen years of age and has committed an offense of violence  
17 to the person which would be a felony if the juvenile was an adult. However, the juvenile has been  
18 previously adjudged delinquent for the commission of an offense of violence to the person which  
19 would be a felony if the juvenile was an adult; or

20 (3) The juvenile is at least fourteen years of age and has committed an offense which would  
21 be a felony if the juvenile was an adult. However, the juvenile has been twice previously adjudged  
22 delinquent for the commission of an offense which would be a felony if the juvenile was an adult.

1 (e) The court may transfer a juvenile proceeding to criminal jurisdiction if there is probable  
2 cause to believe that the juvenile would otherwise satisfy the provisions of subdivision (1),  
3 subsection (d) of this section, but who is younger than fourteen years of age.

4 (f) The court may, upon consideration of the juvenile's mental and physical condition,  
5 maturity, emotional attitude, home or family environment, school experience and similar personal  
6 factors, transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe  
7 that the juvenile would otherwise satisfy the provisions of subdivision (2) or (3), subsection (d) of  
8 this section, but who is younger than fourteen years of age.

9 (g) The court may, upon consideration of the juvenile's mental and physical condition,  
10 maturity, emotional attitude, home or family environment, school experience and similar personal  
11 factors, transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe  
12 that:

13 (1) The juvenile, who is at least fourteen years of age, has committed an offense of violence  
14 to a person which would be a felony if the juvenile was an adult;

15 (2) The juvenile, who is at least fourteen years of age, has committed an offense which would  
16 be a felony if the juvenile was an adult. However, the juvenile has been previously adjudged  
17 delinquent for the commission of a crime which would be a felony if the juvenile was an adult;

18 (3) The juvenile, who is at least fourteen years of age, used or presented a firearm or other  
19 deadly weapon during the commission of a felony; or

20 (4) The juvenile has committed a violation of section four hundred one, article four, chapter  
21 sixty-a of this code which would be a felony if the juvenile was an adult involving the manufacture,  
22 delivery or possession with the intent to deliver a narcotic drug. For purposes of this subdivision, the

1 term narcotic drug has the same definition as that set forth in section one hundred one, article one  
2 of that chapter;

3 (5) The juvenile has committed the crime of second degree arson as defined in section two,  
4 article three, chapter sixty-one of this code involving setting fire to or burning a public building or  
5 church. For purposes of this subdivision, the term public building means a building or structure of  
6 any nature owned, leased or occupied by this state, a political subdivision of this state or a county  
7 board of education and used at the time of the alleged offense for public purposes. For purposes of  
8 this subdivision, the term church means a building or structure of any nature owned, leased or  
9 occupied by a church, religious sect, society or denomination and used at the time of the alleged  
10 offense for religious worship or other religious or benevolent purpose, or as a residence of a minister  
11 or other member of clergy.

12 (h) For purposes of this section, the term offense of violence means an offense which  
13 involves the use or threatened use of physical force against a person.

14 (i) If, after a hearing, the court directs the transfer of any juvenile proceeding to criminal  
15 jurisdiction, it shall state on the record the findings of fact and conclusions of law upon which its  
16 decision is based or shall incorporate findings of fact and conclusions of law in its order directing  
17 transfer.

18 (j) A juvenile who has been transferred to criminal jurisdiction pursuant to subsection (e),  
19 (f) or (g) of this section, by an order of transfer, has the right to either directly appeal an order of  
20 transfer to the supreme court of appeals or to appeal the order of transfer following a conviction of  
21 the offense of transfer. If the juvenile exercises the right to a direct appeal from an order of transfer,  
22 the notice of intent to appeal and a request for transcript is to be filed within ten days from the date

1 of the entry of any order of transfer, and the petition for appeal is to be presented to the Supreme  
2 Court of Appeals within forty-five days from the entry of the order of transfer. Article five, chapter  
3 fifty-eight of this code pertaining to the appeals of judgments in civil actions applies to appeals under  
4 this chapter except as modified in this section. The court may, within forty-five days of the entry of  
5 the order of transfer, by appropriate order, extend and reextend the period in which to file the petition  
6 for appeal for additional time, not to exceed a total extension of sixty days, as in the court's opinion  
7 may be necessary for preparation of the transcript. However, the request for a transcript was made  
8 by the party seeking appeal within ten days of entry of the order of transfer. In the event any notice  
9 of intent to appeal and request for transcript be timely filed, proceedings in criminal court are to be  
10 stayed upon motion of the defendant pending final action of the Supreme Court of Appeals.

11 **§49-4-711. Adjudication for alleged status offenders and delinquents; mandatory initial**  
12 **disposition of status offenders; court orders.**

13 At the outset of an adjudicatory hearing, the court shall inquire of the juvenile whether he or  
14 she wishes to admit or deny the allegations in the petition. The juvenile may elect to stand mute, in  
15 which event the court shall enter a general denial of all allegations in the petition.

16 (1) If the respondent juvenile admits the allegations of the petition, the court shall consider  
17 the admission to be proof of the allegations if the court finds: (1) The respondent fully understands  
18 all of his or her rights under this article; (2) the respondent voluntarily, intelligently and knowingly  
19 admits all facts requisite for an adjudication; and (3) the respondent in his or her admission has not  
20 set forth facts which constitute a defense to the allegations.

21 (2) If the respondent juvenile denies the allegations, the court shall dispose of all pretrial  
22 motions and the court or jury shall proceed to hear evidence.



1 (3) If the allegations in a petition alleging that the juvenile is delinquent are admitted or are  
2 sustained by proof beyond a reasonable doubt, the court shall schedule the matter for disposition  
3 pursuant to section seven hundred four of this article.

4 (4) If the allegations in a petition alleging that the juvenile is a status offender are admitted  
5 or sustained by clear and convincing proof, the court shall refer the juvenile to the Department of  
6 Health and Human Resources for services, pursuant to section seven hundred twelve of this article  
7 and order the department to report back to the court with regard to the juvenile's progress at least  
8 every ninety days or until the court, upon motion or sua sponte, orders further disposition under  
9 section seven hundred four of this article or dismisses the case from its docket. In a judicial circuit  
10 operating its own truancy program, a circuit judge may in lieu of referring truant juveniles to the  
11 department, order that the juveniles be supervised by his or her probation office.

12 (5) If the allegations in a petition are not sustained by proof as provided in subsections (3)  
13 and (4) of this section, the petition shall be dismissed and the juvenile shall be discharged if he or  
14 she is in custody.

15 (6) Findings of fact and conclusions of law addressed to all allegations in the petition shall  
16 be stated on the record or reduced to writing and filed with the record or incorporated into the order  
17 of the court.

18 **§49-4-712. Intervention and services by the department pursuant to initial disposition for**  
19 **status offenders; service plan; enforcement; further disposition; detention;**  
20 **out-of-home placement; department custody; least restrictive alternative;**  
21 **appeal.**

22 (a) The services provided by the department for juveniles adjudicated as status offenders shall

1 be consistent with part ten, article two of this chapter and shall be designed to develop skills and  
2 supports within families and to resolve problems related to the juveniles or conflicts within their  
3 families. Services may include, but are not limited to, referral of juveniles and parents, guardians or  
4 custodians and other family members to services for psychiatric or other medical care, or  
5 psychological, welfare, legal, educational or other social services, as appropriate to the needs of the  
6 juvenile and his or her family.

7 (b) If the child or family of the child fails to comply with the service plan, the department  
8 may petition the circuit court:

9 (1) For a valid court order, as defined in section two hundred seven, article one of this  
10 chapter, to enforce compliance with a service plan or to restrain actions that interfere with or defeat  
11 a service plan; or

12 (2) For a valid court order to place a juvenile out of home in a nonsecure or staff-secure  
13 setting, and/or to place a juvenile in custody of the department.

14 (c) In ordering any further disposition under this section, the court is not limited to the relief  
15 sought in the department's petition and reasonable efforts made to prevent removal of the juvenile  
16 from his or her home or as an alternative to place the juvenile in community-based facilities which  
17 are the least restrictive alternatives appropriate to the needs of the juvenile and the community.

18 (d) The disposition of the juvenile may not be affected by the fact that the juvenile demanded  
19 a trial by jury or made a plea of denial. Any order providing disposition other than mandatory referral  
20 to the department for services is subject to appeal to the Supreme Court of Appeals.

21 (e) Following any further disposition by the court, the court shall inquire of the juvenile  
22 whether or not appeal is desired and the response shall be transcribed; a negative response may not

1 be construed as a waiver. The evidence shall be transcribed as soon as practicable and made available  
2 to the juvenile or his or her counsel, if it is requested for purposes of further proceedings. A judge  
3 may grant a stay of execution pending further proceedings.

4 **§49-4-713. Graduated penalties for juvenile alcohol consumption; fines; community service;**  
5 **revocation of driver's license.**

6 (a) Notwithstanding any provision of this article to the contrary, in addition to any other  
7 penalty available to the court, any child who is adjudicated to have consumed alcoholic liquor or  
8 nonintoxicating beer as defined in section five, article one, chapter sixty of this code, shall:

9 (1) Upon a first adjudication, he or she shall be ordered to perform community service for  
10 not more than eight hours or fined not more than \$25, or both performing community service and  
11 fined.

12 (2) Upon a second adjudication, he or she shall be ordered to perform community service for  
13 not more than sixteen hours or fined not more than \$50, or both performing community service and  
14 fined.

15 (3) Upon a third or subsequent adjudication, he or she shall be ordered to perform not more  
16 than twenty-four hours of community service or fined not more than \$100, or both performing  
17 community service and fined.

18 (b) In addition to the penalties set forth in subsection (a) of this section and notwithstanding  
19 the provisions of subdivision (4), subsection (a), section seven hundred fifteen of this article, any  
20 child adjudicated a second time for consumption of alcoholic liquor or nonintoxicating beer shall  
21 have his or her license to operate a motor vehicle suspended for a definite term of not less than five  
22 nor more than ninety days. Any child adjudicated a third or subsequent time for consumption of an

1 alcoholic liquor or nonintoxicating beer shall have his or her license to operate a motor vehicle  
2 suspended until he or she attains the age of eighteen years.

3 **§49-4-714. Disposition of juvenile delinquents; investigation; proceedings; court discretion;**  
4 **orders; appeal.**

5 (a) In aid of disposition of juvenile delinquents, the juvenile probation officer assigned to the  
6 court shall, upon request of the court, make an investigation of the environment of the juvenile and  
7 the alternative dispositions possible. The court, upon its own motion, or upon request of counsel,  
8 may order a psychological examination of the juvenile. The report of an examination and other  
9 investigative and social reports are not to be made available to the court until after the adjudicatory  
10 hearing. Unless waived, copies of the report shall be provided to counsel for the petitioner and  
11 counsel for the juvenile no later than seventy-two hours prior to the dispositional hearing.

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

16 (1) Dismiss the petition;

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

19 (3) Upon a finding that the juvenile is in need of extra-parental supervision: (A) Place the  
20 juvenile under the supervision of a probation officer of the court or of the court of the county where  
21 the juvenile has his or her usual place of abode or other person while leaving the juvenile in custody  
22 of his or her parent or custodian; and (B) prescribe a program of treatment or therapy or limit the

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

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

14 (5)(A) Upon a finding that the best interests of the juvenile or the welfare of the public  
15 require it, and upon an adjudication of delinquency the court may commit the juvenile to the custody  
16 of the Director of the Division of Juvenile Services for placement in a juvenile services facility for  
17 the treatment, instruction and rehabilitation of juveniles. The court maintains discretion to consider  
18 alternative sentencing arrangements.

19 (B) Notwithstanding any provision of this code to the contrary, in the event that the court  
20 determines that it is in the juvenile's best interests or required by the public welfare to place the  
21 juvenile in the custody of the Division of Juvenile Services, the court shall provide the Division of  
22 Juvenile Services with access to all relevant court orders and records involving the underlying

1 offense or offenses for which the juvenile was adjudicated delinquent, including sentencing and  
2 presentencing reports and evaluations, and provide the division with access to school records,  
3 psychological reports and evaluations, medical reports and evaluations or any other records as may  
4 be in the court's possession as would enable the Division of Juvenile Services to better assess and  
5 determine the appropriate counseling, education and placement needs for the juvenile offender.

6 (C) Commitments may not exceed the maximum term for which an adult could have been  
7 sentenced for the same offense and any maximum allowable sentence to be served in a juvenile  
8 correctional facility may take into account any time served by the juvenile in a detention center  
9 pending adjudication, disposition or transfer. The order shall state that continuation in the home is  
10 contrary to the best interests of the juvenile and why; and whether or not the state department made  
11 a reasonable effort to prevent the placement or that the emergency situation made those efforts  
12 unreasonable or impossible; or

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

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

1 (d) The disposition of the juvenile may not be affected by the fact that the juvenile demanded  
2 a trial by jury or made a plea of denial. Any dispositional order is subject to appeal to the Supreme  
3 Court of Appeals.

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

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

13 **§49-4-715. Authority of the courts to impose additional penalties; public service projects;**  
14 **ineligible to operate a motor vehicle; restitution.**

15 (a) In addition to the methods of disposition provided in section seven hundred fourteen of  
16 this article, the court may enter an order imposing one or more of the following penalties, conditions  
17 and limitations:

18 (1) Impose a fine not to exceed \$100 upon the child;

19 (2) Require the child to make restitution or reparation to the aggrieved party or parties for  
20 actual damages or loss caused by the offense for which the child was found to be delinquent, or if  
21 the child does not make full restitution, require the custodial parent or parents, as defined in section  
22 two, article seven-a, chapter fifty-five, of the child to make partial or full restitution to the victim to

1 the extent the child fails to make full restitution;

2 (3) Require the child to participate in a public service project under the conditions as the  
3 court prescribes, including participation in the litter control program established pursuant to the  
4 authority of section three, article fifteen-a, chapter twenty-two of this code; and

5 (4) When the child is fifteen years of age or younger and has been adjudged delinquent, the  
6 court may order that the child is not eligible to be issued a junior probationary operator's license or  
7 when the child is between the ages of sixteen and eighteen years and has been adjudged delinquent,  
8 the court may order that the child is not eligible to operate a motor vehicle in this state, and any  
9 junior or probationary operator's license shall be surrendered to the court. The child's driving  
10 privileges shall be suspended for a period not to exceed two years, and the clerk of the court shall  
11 notify the Commissioner of the Division of Motor Vehicles of the order.

12 (b) Nothing may limit the discretion of the court in disposing of a juvenile case. The juvenile  
13 may not be denied probation or any other disposition pursuant to this article because the juvenile is  
14 financially unable to pay a fine or make restitution or reparation. All penalties, conditions and  
15 limitations imposed under this section shall be based upon a consideration by the court of the  
16 seriousness of the offense, the child's ability to pay and a program of rehabilitation consistent with  
17 the best interests of the child.

18 (c) Notwithstanding any other provisions of this code to the contrary, in the event a child  
19 charged with delinquency under this chapter is transferred to adult jurisdiction and there convicted,  
20 the court may nevertheless, in lieu of sentencing the person as an adult, make its disposition in  
21 accordance with this section.

22 **§49-4-716. Teen court program; alternative; suitability; unsuccessful cooperation;**



1                                   **requirements; fees.**

2           (a) Notwithstanding any provision of this article to the contrary, any county or municipality  
3 may choose to institute a teen court program in accordance with this section.

4           (b) An juvenile may be given the option of proceeding in a teen court program as an  
5 alternative to the filing of a formal proceeding pursuant to section seven hundred four or section  
6 seven hundred fourteen of this article if:

7           (1) The juvenile is alleged to have committed a status offense or an act of delinquency that  
8 would be a misdemeanor if committed by an adult;

9           (2) The juvenile is alleged to have violated a municipal ordinance over which municipal court  
10 and state court have concurrent jurisdiction; or

11           (3) The juvenile is otherwise subject to the provisions of this article.

12           (c) If the circuit court or municipal court finds that the offender is a suitable candidate for the  
13 teen court program, it may extend the option to enter the program as an alternative procedure. A  
14 juvenile may not enter the teen court program unless he or she and his or her parent or guardian  
15 consent to participating in the program.

16           (d) Any juvenile who does not successfully cooperate in, and complete, the teen court  
17 program and any disposition imposed during the juvenile's participation shall be returned to the  
18 circuit court for further disposition as provided by section seven hundred and twelve or seven  
19 hundred fourteen of this article, as the case may be or returned to the municipal court for further  
20 disposition for cases originating in municipal court consistent with any applicable ordinance.

21           (e) The following provisions apply to all teen court programs:

22           (1) The judge for each teen court proceeding shall be an acting or retired circuit court judge

1 or an active member of the West Virginia State Bar, who serves on a voluntary basis.

2 (2) Any juvenile who selects the teen court program as an alternative disposition shall agree  
3 to serve thereafter on at least two occasions as a teen court juror.

4 (3) Volunteer students from grades seven through twelve of the schools within the county  
5 shall be selected to serve as defense attorney, prosecuting attorney, court clerk, bailiff and jurors for  
6 each proceeding.

7 (4) Disposition in a teen court proceeding shall consist of requiring the juvenile to perform  
8 sixteen to forty hours of community service, the duration and type of which shall be determined by  
9 the teen court jury from a standard list of available community service programs provided by the  
10 county juvenile probation system and a standard list of alternative consequences that are consistent  
11 with the purposes of this article. The performance of the juvenile shall be monitored by the county  
12 juvenile probation system for cases originating in the circuit court's jurisdiction, or municipal teen  
13 court coordinator or other designee for cases originating in the municipal court's jurisdiction. The  
14 juvenile shall also perform at least two sessions of teen court jury service and, if considered  
15 appropriate by the circuit court judge or teen court judge, participate in an education program.  
16 Nothing in this section may be construed so as to deny availability of the services provided under  
17 section seven hundred and twelve of this article to juveniles who are otherwise eligible for the  
18 service.

19 (f) The rules for administration, procedure and admission of evidence shall be determined  
20 by the chief circuit judge or teen court judge, but in no case may the court require a juvenile to admit  
21 the allegation against him or her as a prerequisite to participation in the teen court program. A copy  
22 of these rules shall be provided to every teen court participant.

1 (g) Each county or municipality that operates, or wishes to operate, a teen court program as  
2 provided in this section is hereby authorized to adopt a mandatory fee of up to \$5 to be assessed as  
3 provided in this subsection. Municipal courts may assess a fee pursuant to this section upon  
4 authorization by the city council of the municipality. Assessments collected by the clerk of the court  
5 pursuant to this subsection shall be deposited into an account specifically for the operation and  
6 administration of a teen court program. The clerk of the court of conviction shall collect the fees  
7 established in this subsection and shall remit the fees to the teen court program.

8 (h) Any mandatory fee established by a county commission or city council in accordance with  
9 this subsection shall be paid by the defendant on a judgment of guilty or a plea of nolo contendere  
10 for each violation committed in the county or municipality of any felony, misdemeanor or any local  
11 ordinance, including traffic violations and moving violations but excluding municipal parking  
12 ordinances. Municipalities operating teen courts are authorized to use fees assessed in municipal  
13 court pursuant to this subsection for operation of a teen court in their municipality

14 **§49-4-717. Sexting educational diversion program; requirements.**

15 (a) Before a juvenile petition is filed for activity proscribed by article eight-a or eight-c,  
16 chapter sixty-one of this code, or after probable cause has been found to believe a juvenile has  
17 committed a violation thereof, but before an adjudicatory hearing on the petition, the court or a  
18 prosecuting attorney may direct or allow a minor who engaged in the activity to participate in an  
19 educational diversion program which meets the requirements of subsection (b) of this section. The  
20 prosecutor or court may refer the minor to the educational diversion program, as part of a prepetition  
21 intervention pursuant to section seven hundred two of this article.

22 (b) The West Virginia Supreme Court of Appeals may develop an educational diversion

1 program for minors who are accused of activity proscribed by article eight-a or eight-c, chapter  
2 sixty-one of this code. As a part of any specialized educational diversion program so developed, the  
3 following issues and topics should be included:

4 (1) The legal consequences of and penalties for sharing sexually suggestive or explicit  
5 materials, including applicable federal and state statutes;

6 (2) The nonlegal consequences of sharing sexually suggestive or explicit materials including,  
7 but not limited to, the effect on relationships, loss of educational and employment opportunities, and  
8 being barred or removed from school programs and extracurricular activities;

9 (3) How the unique characteristics of cyberspace and the Internet, including searchability,  
10 replicability and an infinite audience, can produce long-term and unforeseen consequences for  
11 sharing sexually suggestive or explicit materials; and

12 (4) The connection between bullying and cyber-bullying and minors sharing sexually  
13 suggestive or explicit materials.

14 (c) Once a specialized educational diversion program is established by the West Virginia  
15 Supreme Court of Appeals consistent with this section, the minor's successful completion of the  
16 educational diversion program shall be duly considered by the prosecutor or the court in their  
17 respective decisions to either abstain from filing the juvenile petition or to dismiss the juvenile  
18 petition, as follows:

19 (1) If the minor has not previously been judicially determined to be delinquent, and the  
20 minor's activities represent a first offense for a violation of section three-b, article eight-c, chapter  
21 sixty-one of this code, the minor is not subject to the requirements of that section, as long as he or  
22 she successfully completes the educational diversion program; and

1 (2) If the minor commits a second or subsequent violation of article eight-a or eight-c, chapter  
2 sixty-one of this code, the minor's successful completion of the educational diversion program may  
3 be considered as a factor to be considered by the prosecutor and court in deciding to not file a  
4 petition or to dismiss a petition, upon successful completion of an improvement plan established by  
5 the court.

6 **§49-4-718. Modification of dispositional orders; motions; hearings.**

7 (a) A dispositional order of the court may be modified:

8 (1) Upon the motion of the probation officer, a department official, the director of the  
9 division of juvenile services or prosecuting attorney; or

10 (2) Upon the request of the child or a child's parent or custodian who alleges a change of  
11 circumstances relating to disposition of the child.

12 (b) Upon a motion or request, the court shall conduct a review proceeding, except that if the  
13 last dispositional order was within the previous six months the court may deny a request for review.

14 Notice in writing of a review proceeding shall be given to the child, the child's parent or custodian  
15 and all counsel not less than seventy-two hours prior to the proceeding. The court shall review the

16 performance of the child, the child's parent or custodian, the child's social worker and other persons  
17 providing assistance to the child or child's family. If the motion or request for review of disposition

18 is based upon an alleged violation of a court order, the court may modify the dispositional order to  
19 a more restrictive alternative if it finds clear and convincing proof of substantial violation. In the

20 absence of proof, the court may decline to modify the dispositional order or may modify the order  
21 to one of the less restrictive alternatives set forth in section seven hundred twelve of this article. A

22 juvenile may not be required to seek a modification order as provided in this section in order to

1 exercise his or her right to seek release by habeas corpus.

2 (c) In a hearing for modification of a dispositional order, or in any other dispositional hearing,  
3 the court shall consider the best interests of the child and the welfare of the public.

4 **§49-4-719. Juvenile probation officers; appointment; salary; facilities; expenses; duties;**  
5 **powers.**

6 (a)(1) Each circuit court, subject to the approval of the Supreme Court of Appeals and in  
7 accordance with the rules of the Supreme Court of Appeals, shall appoint one or more juvenile  
8 probation officers and clerical assistants for the circuit. A probation officer or clerical assistant may  
9 not be related by blood or marriage to the appointing judge.

10 (2) The salary for juvenile probation officers and clerical assistants shall be determined and  
11 fixed by the Supreme Court of Appeals. All expenses and costs incurred by the juvenile probation  
12 officers and their staff shall be paid by the Supreme Court of Appeals in accordance with its rules.  
13 The county commission of each county shall provide adequate office facilities for juvenile probation  
14 officers and their staff. All equipment and supplies required by juvenile probation officers and their  
15 staff shall be provided by the Supreme Court of Appeals.

16 (3) A juvenile probation officer may not be considered a law-enforcement official under this  
17 chapter.

18 (b) The clerk of a court shall notify, if practicable, the chief probation officer of the county,  
19 or his or her designee, when a juvenile is brought before the court or judge for proceedings under  
20 this article. When notified, or if the probation officer otherwise obtains knowledge of fact, he or she  
21 or one of his or her assistants shall:

22 (1) Make investigation of the case; and

1 (2) Furnish information and assistance that the court or judge may require.

2 **§49-4-720. Prohibition on committing juveniles to adult facilities; copy provided to juvenile.**

3 (a) No juvenile, including one who has been transferred to criminal jurisdiction of the court,  
4 shall be detained or confined in any institution in which he or she has contact with or comes within  
5 sight or sound of any adult persons incarcerated because they have been convicted of a crime or are  
6 awaiting trial on criminal charges or with the security staff (including management) or direct-care  
7 staff of a jail or locked facility for adults.

8 (b) No child who has been convicted of an offense under the adult jurisdiction of the circuit  
9 court shall be held in custody in a correctional facility of this state. The Division of Juvenile Services  
10 shall be responsible for notifying the sentencing court within forty-five days of the child's eighteenth  
11 birthday that the child will be turning eighteen years of age. Within ten days of the child's eighteenth  
12 birthday, the court shall transfer the offender to an adult correctional facility or to any other  
13 disposition the court deems appropriate for adult offenders. Notwithstanding any other provision  
14 of this code to the contrary, prior to the transfer the child shall be returned to the sentencing court  
15 for the purpose of reconsideration and modification of the imposed sentence, which shall be based  
16 upon a review of all records and relevant information relating to the child's rehabilitation since his  
17 or her conviction under the adult jurisdiction of the court.

18 **§49-4-721. Rules governing juvenile facilities; rights of juveniles.**

19 (a) The Director of the Division of Juvenile Services within the Department of Military  
20 Affairs and Public Safety shall propose legislative rules for promulgation in accordance with article  
21 three, chapter twenty-nine-a of this code, outlining policies and procedures governing the operation  
22 of those correctional, detention, predispositional detention centers and other facilities wherein

1 juveniles may be housed. These policies and procedures shall include, but are not limited to,  
2 standards of cleanliness, temperature and lighting; availability of medical and dental care; provision  
3 of food, furnishings, clothing and toilet articles; supervision; procedures for enforcing rules of  
4 conduct consistent with due process of law; and visitation privileges. A juvenile in custody or  
5 detention has, at a minimum, the following rights, and the policies prescribed ensuring that:

6 (1) A juvenile may not be punished by physical force, deprivation of nutritious meals,  
7 deprivation of family visits or imposition of solitary confinement;

8 (2) A juvenile shall be afforded an opportunity to participate in physical exercise each day;

9 (3) Except for sleeping hours, a juvenile in a state facility may not be locked alone in a room  
10 unless that juvenile is not amenable to reasonable direction and control;

11 (4) A juvenile shall be provided with his or her own clothing or individualized clothing  
12 which is clean and supplied by the facility, and shall also be afforded daily access to showers;

13 (5) A juvenile shall be afforded constant access to writing materials and may send mail  
14 without limitation, censorship or prior reading, and may receive mail without prior reading, except  
15 that mail may be opened in the juvenile's presence, without being read, to inspect for contraband;

16 (6) A juvenile may make and receive regular local phone calls without charge and long  
17 distance calls to his or her family without charge at least once a week, and receive visitors daily and  
18 on a regular basis;

19 (7) A juvenile shall be afforded immediate access to medical care as needed;

20 (8) A juvenile in a juvenile detention facility or juvenile corrections facility shall be provided  
21 access to education, including teaching, educational materials and books;

22 (9) A juvenile shall be afforded reasonable access to an attorney upon request; and



1 (10) A juvenile shall be afforded a grievance procedure, including an appeal mechanism.

2 (b) Upon admission to a detention facility or juvenile corrections facility, a juvenile shall be  
3 furnished with a copy of the rights provided him or her by virtue of this section and as further  
4 prescribed by rules proposed and promulgated pursuant to this section.

5 **§49-4-722. Conviction for offense while in custody.**

6 (a) Notwithstanding any other provision of law to the contrary, any person who is eighteen  
7 years of age or older who is convicted as an adult of an offense that he or she committed while in  
8 the custody of the Division of Juvenile Services and who is therefor sentenced to a regional jail or  
9 state correctional facility for the offense may not be returned to the custody of the division upon the  
10 completion of his or her adult sentence until a hearing is held before the court which committed the  
11 person to the custody of the Division of Juvenile Services at which hearing the division may present  
12 any objections it may have to return the person to its custody. If the division does object and the  
13 court overrules the division's objections, it shall make specific written findings as to its rationale for  
14 overruling the objections.

15 (b) No person who is eighteen years of age or older who is convicted as an adult of a felony  
16 crime of violence against the person while in the custody of the Division of Juvenile Services be  
17 returned to the custody of the Division of Juvenile Services upon completion of his or her adult  
18 sentence.

19 **§49-4-723. Discrimination prohibited; penalties; damages.**

20 (a) No individual, firm, corporation or other entity may discriminate against any person in  
21 any manner due to that person's prior involvement in a proceeding under this article if that person's  
22 records have been expunged pursuant to this article. This includes, but is not limited to,

1 discrimination relating to employment, housing, education, obtaining credit, and contractual rights.

2 (b) Any person who willfully violates this section is guilty of a misdemeanor and, upon  
3 conviction, shall be fined not more than \$1,000, or confined in jail for not more than six months, or  
4 both fined and confined. Additionally, a person who violates this section is liable to the person who  
5 has been discriminated against for damages in the amount of \$300 or the actual amount of damages,  
6 whichever is greater.

7 PART VIII. SUPPORT AND SUPPORT ORDERS.

8 **§49-4-801. Support of a child removed from home pursuant to this chapter; order**  
9 **requirements.**

10 (a) It is the intent of the Legislature that to the extent practicable, this article should  
11 encourage and require a child's parents to meet the obligation of providing that child with adequate  
12 food, shelter, clothing, education, and health and child care.

13 (b) This article shall be construed to be consistent with articles one, eleven, twelve, thirteen,  
14 fourteen, fifteen, sixteen, eighteen, nineteen and twenty four of chapter forty-eight of this code, and  
15 those articles apply to actions pursuant to this chapter unless expressly stated otherwise.

16 (c) When a child is removed from his or her home pursuant to this chapter, the court shall  
17 issue a support order payable by the child's mother. If the child's legal father has been determined,  
18 the court shall issue a child support order payable by the legal father. If no legal father has been  
19 determined, the court shall issue an order establishing paternity prior to or simultaneously with  
20 establishing a support order payable by the child's legal father. Copies of the orders shall be provided  
21 to the Department of Health and Human Resources, Bureau of Child Support Enforcement.

22 (d) The order establishing a child support obligation must use the Guidelines for Child

1 Support Awards that are set forth in article thirteen, chapter forty-eight of this code.

2 (e) In addition to the reasons for deviation listed in section seven hundred two, article  
3 thirteen, chapter forty-eight of this code, deviation from the child support guidelines is appropriate  
4 when the court finds that:

5 (1) It may assist the parent in successful completion of an improvement period;

6 (2) It may be in the best interest of the minor child to issue a zero child support order; and/or

7 (3) The parent temporarily or permanently has no gross income as defined in section two  
8 hundred twenty eight, article one, chapter forty-eight of this code.

9 **§49-4-802. General provisions for support orders; contempt.**

10 (a) Any pre-existing support order from any other court or administrative agency with  
11 authority to issue a support order shall remain in full force and effect until a superseding order is  
12 issued.

13 (b) If a child is returned to the physical custody of a parent, that parent is not responsible for  
14 paying child support for the duration of time that parent has physical custody of the child without  
15 the necessity of entry of another court order terminating that parent's child support obligation.

16 (c) If the action is dismissed for failure to prove the allegations of abuse or neglect, any  
17 support provision issued pursuant to this chapter are void ab initio. Any adjudication of paternity  
18 shall remain in full force and effect.

19 (d) The support obligation shall automatically continue beyond the termination of the payor's  
20 parental rights, unless the support obligation is explicitly ended in an order.

21 **§49-4-803. Enforcement of support orders.**

22 (a) Support orders may be enforced through any manner provided in chapters thirty-eight and

1 forty-eight of this code.

2 (b) An action for contempt for nonpayment of support may be brought by the Department of  
3 Health and Human Resources, Bureau for Children and Families or Bureau for Child Support  
4 Enforcement; the child's physical custodian; the child's guardian ad litem; or the prosecuting  
5 attorney.

6 PART IX. CONTRIBUTING TO THE DELINQUENCY OF A CHILD.

7 **§49-4-901. Contributing to delinquency or neglect of a child; penalties; payment of medical**  
8 **costs; proof; court discretion; other payments; suspended sentence;**  
9 **maintenance and care; temporary custody.**

10 (a) A person who by any act or omission contributes to, encourages or tends to cause the  
11 delinquency or neglect of any child, including, but not limited to, aiding or encouraging the child to  
12 habitually or continually refuse to respond, without just cause, to the lawful supervision of the child's  
13 parents, guardian or custodian or to be habitually absent from school without just cause, is guilty of  
14 a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500,  
15 or confined in jail for a period not exceeding one year, or both fined and confined.

16 (b) In addition to any penalty provided under this section and any restitution which may be  
17 ordered by the court under article eleven-a, chapter sixty-one of this code, the court may order any  
18 person convicted under this section to pay all or any portion of the cost of medical, psychological  
19 or psychiatric treatment of the child resulting from the act or acts for which the person is convicted,  
20 whether or not the child is considered to have sustained bodily injury.

21 (c) This section does not apply to any parent, guardian or custodian who fails or refuses, or  
22 allows another person to fail or refuse, to supply a child under the care, custody or control of the

1 parent, guardian or custodian with necessary medical care, when medical care conflicts with the  
2 tenets and practices of a recognized religious denomination or order of which parent, guardian or  
3 custodian is an adherent or member.

4 (d) In finding a person guilty of contributing to the delinquency of a child, it is not necessary  
5 to prove that the child has actually become delinquent, if it appears from the evidence that the  
6 accused is guilty of conduct or of an act of neglect or omission of duty on his or her part toward the  
7 child which would tend to bring about or to encourage the delinquency.

8 (e) A court or judge, upon convictions as are imposed in accordance with this chapter, may:

9 (1) Suspend the sentence of a person found guilty of contributing to the delinquency of a  
10 child;

11 (2) Stay or postpone the enforcement of execution of sentence; or

12 (3) Release the person from custody.

13 (f) If the sentence of the person found guilty is suspended, the court or judge may make it a  
14 condition of suspending sentence that the person pay for whatever treatment and care may be  
15 required for the welfare of the child, and for its support and maintenance while in the custody of the  
16 department, person, or institution, and any other expense that may have resulted from, or be  
17 necessary because of, the act or acts of the person found guilty.

18 (g) The conditions upon which the sentence of a person found guilty of contributing to the  
19 delinquency, or to the neglect of any child, may be suspended, may include the furnishing of a good  
20 and sufficient bond to the State of West Virginia in the penal sum as the court shall determine, not  
21 exceeding \$1,000, conditioned upon:

22 (1) Furnishing whatever treatment and care may be required for the welfare of the child;

1           (2) Doing whatever may be calculated to secure obedience to the law or to remove the cause  
2 of delinquency, or neglect; and

3           (3) Payment of the amount as the court may order, not exceeding \$20 per month, for the  
4 support, care, and maintenance of the child to whose delinquency the person contributed. The sum  
5 shall be expended under the order of the court or judge for the purposes enumerated.

6           (h)(1) The penalty of a bond given upon suspension of sentence which becomes forfeited is  
7 recoverable without separate suit. The court or judge may cause citation or summons to issue to the  
8 principal and surety, requiring that they appear at a time named by the court or judge, not less than  
9 ten nor more than twenty days from the issuance of the summons, and show cause why judgment  
10 should not be entered for the penalty of the bond and execution issued against the property of the  
11 principal and of the surety. Upon failure to appear, or failure to show sufficient cause, the court shall  
12 enter judgment in behalf of the State of West Virginia against the principal and surety in an amount  
13 not to exceed the penalty of the bond plus costs.

14           (2) Any money collected or paid upon an execution, or upon the bond, shall be deposited with  
15 the clerk of the court in which the bond was given. The money shall be applied first to the payment  
16 of all court costs and then to the treatment, care, or maintenance of the child for whose delinquency  
17 conviction was had. If any money so collected is not required for these purposes, it shall be paid  
18 within one year into the State Treasury.

19           (i) If it appear to the satisfaction of the court or judge at any time while a suspension of  
20 sentence or stay of execution remains in effect, that the sentence ought to be enforced, the court or  
21 judge may enforce the sentence. A jail sentence shall commence from the date upon which the  
22 sentence is so ordered to be enforced.

1 (j) If the conditions of suspension are complied with, the sentence shall remain suspended,  
2 subject to enforcement upon the violation of any of the conditions imposed. Upon a failure to  
3 comply with any of the conditions imposed, the sentence shall be enforced and any bond given to  
4 insure the performance of the conditions shall be forfeited.

5 (k) A sentence may not be suspended, or final judgment or execution stayed, for a period  
6 exceeding two years. At the end of two years from the time of imposition of sentence or sooner in  
7 the discretion of the court or judge, the defendant shall be finally released and discharged.

8 (l) Where a person is found guilty of contributing to the delinquency of a child, the court or  
9 judge may place the child in the temporary custody of the department or of some responsible person  
10 or approved institution.

11 **§49-4-902. Custody of child by convicted person.**

12 If the guilty person had custody of the child prior to conviction, the court or judge may, on  
13 suspending sentence, permit the child to remain in the custody of the person, and make it a condition  
14 of suspending sentence that the person provides whatever treatment and care may be required for the  
15 welfare of the child, and shall do whatever may be calculated to secure obedience to the law or to  
16 remove the cause of the delinquency.

17 **§49-4-903. Interference with disposition of child punishable as contempt of court.**

18 A person who interferes with the direction of disposition of a child in accordance with an  
19 order of the court or judge made in pursuance of this chapter, or with the department, or a probation  
20 or other officer of the court in carrying out the directions of the court or judge under an order, is  
21 subject to punishment as for contempt of court.

22 **§49-4-904. Enticing child from custody; penalties.**

1 A person who personally or by agent entices or forcibly removes a child from a custody in  
2 which the child was placed under this chapter is guilty of a misdemeanor and, upon conviction shall  
3 be fined not more than \$100, or confined in jail not more than six months, or fined and confined.

4 **ARTICLE 5. RECORD KEEPING AND DATABASE.**

5 **§49-5-101. Confidentiality of records; nonrelease of records; exceptions; penalties.**

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

11 (b) Notwithstanding the provisions of subsection (a) of this section or any other provision  
12 of this code to the contrary, records concerning a child or juvenile, except adoption records and  
13 records disclosing the identity of a person making a complaint of child abuse or neglect may be made  
14 available:

15 (1) Where otherwise authorized by this chapter;

16 (2) To:

17 (A) The child;

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

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

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

21 or

22 (4) Pursuant to an order of a court of record. However, the court shall review the record or



1 records for relevancy and materiality to the issues in the proceeding and safety, and may issue an  
2 order to limit the examination and use of the records or any part thereof.

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

7 (1) Federal, state or local government entities, or any agent of those entities, including  
8 law-enforcement agencies and prosecuting attorneys, having a need for that information in order to  
9 carry out its responsibilities under law to protect children from abuse and neglect;

10 (2) The child fatality review team;

11 (3) Child abuse citizen review panels;

12 (4) Multidisciplinary investigative and treatment teams; or

13 (5) A grand jury, circuit court or family court, upon a finding that information in the records  
14 is necessary for the determination of an issue before the grand jury, circuit court or family court.

15 (d) In the event of a child fatality or near fatality due to child abuse and neglect, information  
16 relating to a fatality or near fatality shall be made public by the Department of Health and Human  
17 Resources and to the entities described in subsection (c) of this section, all under the circumstances  
18 described in that subsection. However, information released by the Department of Health and Human  
19 Resources pursuant to this subsection may not include the identity of a person reporting or making  
20 a complaint of child abuse or neglect. For purposes of this subsection, “near fatality” means any  
21 medical condition of the child which is certified by the attending physician to be life threatening.

22 (e) Except in juvenile proceedings which are transferred to criminal proceedings,

1 law-enforcement records and files concerning a child or juvenile shall be kept separate from the  
2 records and files of adults and not included within the court files. Law-enforcement records and files  
3 concerning a child or juvenile shall only be open to inspection pursuant to section one hundred three  
4 of this article.

5 (f) Any person who willfully violates this section is guilty of a misdemeanor and, upon  
6 conviction, shall be fined not more than \$1,000, or confined in jail for not more than six months,  
7 or both fined and confined. A person convicted of violating this section is also liable for damages  
8 in the amount of \$300 or actual damages, whichever is greater.

9 (g) Notwithstanding the provisions of this section, or any other provision of this code to the  
10 contrary, the name and identity of any juvenile adjudicated or convicted of a violent or felonious  
11 crime shall be made available to the public;

12 (h)(1) Notwithstanding the provisions of this section, or any other provision of this code to  
13 the contrary, the Division of Juvenile Services may provide access to and the confidential use of a  
14 treatment plan, court records or other records of a juvenile to an agency in another state which:

15 (A) Performs the same functions in that state that are performed by the Division of Juvenile  
16 Services in this state;

17 (B) Has a reciprocal agreement with this state; and

18 (C) Has legal custody of the juvenile.

19 (2) A record which is shared under this subsection may only provide information which is  
20 relevant to the supervision, care, custody and treatment of the juvenile.

21 (3) The Division of Juvenile Services is authorized to enter into reciprocal agreements with  
22 other states and to propose rules for legislative approval in accordance with article three, chapter

1 twenty-nine-a of this code to implement this subsection.

2 (4) Other than the authorization explicitly given in this subsection, this subsection may not  
3 be construed to enlarge or restrict access to juvenile records as provided elsewhere in this code.

4 **§49-5-102. Preservation of records.**

5 The proceedings, records, reports, case histories, and all other papers or documents of or  
6 received by the state department in the administration of this chapter shall be filed of record and  
7 preserved.

8 **§49-5-103. Confidentiality of juvenile records; permissible disclosures; conditions; penalties;  
9 damages.**

10 (a) Any findings or orders of the court in a juvenile proceeding shall be known as the  
11 “juvenile record” and shall be maintained by the clerk of the court.

12 (b) Records of a juvenile proceeding conducted under this chapter are not public records and  
13 shall not be disclosed to anyone unless disclosure is otherwise authorized by this section.

14 (c) Notwithstanding the provisions of subsection (a) of this section, a copy of a juvenile's  
15 records shall automatically be disclosed to certain school officials, subject to the following terms and  
16 conditions:

17 (1) Only the records of certain juveniles shall be disclosed. These include, and are limited  
18 to, cases in which:

19 (A) The juvenile has been charged with an offense which:

20 (i) Involves violence against another person;

21 (ii) Involves possession of a dangerous or deadly weapon; or

22 (iii) Involves possession or delivery of a controlled substance as that term is defined in

1 section one hundred one, article one, chapter sixty-a of this code; and

2 (B) The juvenile's case has proceeded to a point where one or more of the following has  
3 occurred:

4 (i) A circuit court judge or magistrate has determined that there is probable cause to believe  
5 that the juvenile committed the offense as charged;

6 (ii) A circuit court judge or magistrate has placed the juvenile on probation for the offense;

7 (iii) A circuit court judge or magistrate has placed the juvenile into an pre-adjudicatory  
8 community supervision period in accordance with section seven hundred eight, article four of this  
9 chapter; or

10 (iv) Some other type of disposition has been made of the case other than dismissal.

11 (2) The circuit court for each judicial circuit in West Virginia shall designate one person to  
12 supervise the disclosure of juvenile records to certain school officials;

13 (3) If the juvenile attends a West Virginia public school, the person designated by the circuit  
14 court shall automatically disclose all records of the juvenile's case to the county superintendent of  
15 schools in the county in which the juvenile attends school and to the principal of the school which  
16 the juvenile attends, subject to the following:

17 (A) At a minimum, the records shall disclose the following information:

18 (i) Copies of the arrest report;

19 (ii) Copies of all investigations;

20 (iii) Copies of any psychological test results and any mental health records;

21 (iv) Copies of any evaluation reports for probation or facility placement; and

22 (v) Any other material that would alert the school to potential danger that the juvenile may

1 pose to himself, herself or others;

2 (B) The disclosure of the juvenile's psychological test results and any mental health records  
3 may only be made in accordance with subdivision (14) of this subsection;

4 (C) If the disclosure of any record to be automatically disclosed under this section is  
5 restricted in its disclosure by the Health Insurance Portability and Accountability Act of 1996, PL  
6 104-191, and any amendments and regulations under the act, the person designated by the circuit  
7 court shall provide the superintendent and principal any notice of the existence of the record that is  
8 permissible under the act and, if applicable, any action that is required to obtain the record; and

9 (D) When multiple disclosures are required by this subsection, the person designated by the  
10 circuit court is required to disclose only material in the juvenile record that had not previously been  
11 disclosed to the county superintendent and the principal of the school which the juvenile attends.

12 (4) If the juvenile attends a private school in West Virginia, the person designated by the  
13 circuit court shall determine the identity of the highest ranking person at that school and shall  
14 automatically disclose all records of a juvenile's case to that person.

15 (5) If the juvenile does not attend school at the time the juvenile's case is pending, the person  
16 designated by the circuit court may not transmit the juvenile's records to any school. However, the  
17 person designated by the circuit court shall transmit the juvenile's records to any school in West  
18 Virginia which the juvenile subsequently attends.

19 (6) The person designated by the circuit court may not automatically transmit juvenile records  
20 to a school which is not located in West Virginia. Instead, the person designated by the circuit court  
21 shall contact the out-of-state school, inform it that juvenile records exist and make an inquiry  
22 regarding whether the laws of that state permit the disclosure of juvenile records. If so, the person

1 designated by the circuit court shall consult with the circuit judge who presided over the case to  
2 determine whether the juvenile records should be disclosed to the out-of-state school. The circuit  
3 judge has discretion in determining whether to disclose the juvenile records and shall consider  
4 whether the other state's law regarding disclosure provides for sufficient confidentiality of juvenile  
5 records, using this section as a guide. If the circuit judge orders the juvenile records to be disclosed,  
6 they shall be disclosed in accordance with subdivision (7) of this subsection.

7           (7) The person designated by the circuit court shall transmit the juvenile's records to the  
8 appropriate school official under cover of a letter emphasizing the confidentiality of those records  
9 and directing the official to consult this section of the code. A copy of this section of the code shall  
10 be transmitted with the juvenile's records and cover letter.

11           (8) Juvenile records are absolutely confidential by the school official to whom they are  
12 transmitted, and nothing contained within the juvenile's records may be noted on the juvenile's  
13 permanent educational record. The juvenile records are to be maintained in a secure location and are  
14 not to be copied under any circumstances. However, the principal of a school to whom the records  
15 are transmitted shall have the duty to disclose the contents of those records to any teacher who  
16 teaches a class in which the subject juvenile is enrolled and to the regular driver of a school bus in  
17 which the subject juvenile is regularly transported to or from school, except that the disclosure of  
18 the juvenile's psychological test results and any mental health records may only be made in  
19 accordance with subdivision (14) of this subsection. Furthermore, any school official to whom the  
20 juvenile's records are transmitted may disclose the contents of those records to any adult within the  
21 school system who, in the discretion of the school official, has the need to be aware of the contents  
22 of those records.

1           (9) If for any reason a juvenile ceases to attend a school which possesses that juvenile's  
2 records, the appropriate official at that school shall seal the records and return them to the circuit  
3 court which sent them to that school. If the juvenile has changed schools for any reason, the former  
4 school shall inform the circuit court of the name and location of the new school which the juvenile  
5 attends or will be attending. If the new school is located within West Virginia, the person designated  
6 by the circuit court shall forward the juvenile's records to the juvenile's new school in the same  
7 manner as provided in subdivision (7) of this subsection. If the new school is not located within West  
8 Virginia, the person designated by the circuit court shall handle the juvenile records in accordance  
9 with subdivision (6) of this subsection.

10           If the juvenile has been found not guilty of an offense for which records were previously  
11 forwarded to the juvenile's school on the basis of a finding of probable cause, the circuit court may  
12 not forward those records to the juvenile's new school. However, this does not affect records related  
13 to other prior or future offenses. If the juvenile has graduated or quit school or will otherwise not be  
14 attending another school, the circuit court shall retain the juvenile's records and handle them as  
15 otherwise provided in this article.

16           (10) Under no circumstances may one school transmit a juvenile's records to another school.

17           (11) Under no circumstances may juvenile records be automatically transmitted to a college,  
18 university or other post-secondary school.

19           (12) No one may suffer any penalty, civil or criminal, for accidentally or negligently  
20 attributing certain juvenile records to the wrong person. However, that person has the affirmative  
21 duty to promptly correct any mistake that he or she has made in disclosing juvenile records when the  
22 mistake is brought to his or her attention. A person who intentionally attributes false information to

1 a certain person shall be subjected to both criminal and civil penalties in accordance with subsection  
2 (e) of this section.

3 (13) If a circuit court judge or magistrate has determined that there is probable cause to  
4 believe that a juvenile has committed an offense but there has been no final adjudication of the  
5 charge, the records which are transmitted by the circuit court shall be accompanied by a notice which  
6 clearly states in bold print that there has been no determination of delinquency and that our legal  
7 system requires a presumption of innocence.

8 (14) The county superintendent shall designate the school psychologist or psychologists to  
9 receive the juvenile's psychological test results and any mental health records. The psychologist  
10 designated shall review the juvenile's psychological test results and any mental health records and,  
11 in the psychologist's professional judgment, may disclose to the principal of the school that the  
12 juvenile attends and other school employees who would have a need to know the psychological test  
13 results, mental health records and any behavior that may trigger violence or other disruptive behavior  
14 by the juvenile. Other school employees include, but are not limited to, any teacher who teaches a  
15 class in which the subject juvenile is enrolled and the regular driver of a school bus in which the  
16 subject juvenile is regularly transported to or from school.

17 (c) Notwithstanding the provisions of subsection (a) of this section, juvenile records may be  
18 disclosed, subject to the following terms and conditions:

19 (1) If a juvenile case is transferred to the criminal jurisdiction of the circuit court pursuant  
20 to subsection (c) or (d), section seven hundred ten, article four of this chapter, the juvenile records  
21 are open to public inspection.

22 (2) If a juvenile case is transferred to the criminal jurisdiction of the circuit court pursuant



1 to subsection (e), (f) or (g), section seven hundred ten, article four of this chapter, the juvenile  
2 records are open to public inspection only if the juvenile fails to file a timely appeal of the transfer  
3 order, or the Supreme Court of Appeals refuses to hear or denies an appeal which has been timely  
4 filed.

5 (3) If a juvenile is fourteen years of age or older and a court has determined there is a  
6 probable cause to believe the juvenile committed an offense set forth in subsection (g), section seven  
7 hundred ten of article four of this chapter, but the case is not transferred to criminal jurisdiction, the  
8 juvenile records are open to public inspection pending trial only if the juvenile is released on bond  
9 and no longer detained or adjudicated delinquent of the offense.

10 (4) If a juvenile is younger than fourteen years of age and a court has determined there is  
11 probable cause to believe that the juvenile committed the crime of murder under section one, two  
12 or three, article two, chapter sixty-one of this code, or the crime of sexual assault in the first degree  
13 under section three, article eight-b of chapter sixty-one, but the case is not transferred to criminal  
14 jurisdiction, the juvenile records are open to public inspection pending trial only if the juvenile is  
15 released on bond and no longer detained or adjudicated delinquent of the offense.

16 (5) Upon a written petition and pursuant to a written order, the circuit court may permit  
17 disclosure of juvenile records to:

18 (A) A court, in this state or another state, which has juvenile jurisdiction and has the juvenile  
19 before it in a juvenile proceeding;

20 (B) A court, in this state or another state, exercising criminal jurisdiction over the juvenile  
21 which requests records for the purpose of a presentence report or disposition proceeding;

22 (C) The juvenile, the juvenile's parents or legal guardian, or the juvenile's counsel;

1 (D) The officials of a public institution to which the juvenile is committed if they require  
2 those records for transfer, parole or discharge; or

3 (E) A person who is conducting research. However, juvenile records may be disclosed for  
4 research purposes only upon the condition that information which would identify the subject juvenile  
5 or the juvenile's family may not be disclosed.

6 (6) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or  
7 copies made available, to a probation officer upon his or her request. Any probation officer may  
8 access relevant juvenile case information contained in any electronic database maintained by or for  
9 the Supreme Court of Appeals and share it with any other probation officer.

10 (7) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or  
11 copies made available, in response to any lawfully issued subpoena from a federal court or federal  
12 agency.

13 (d) Any records open to public inspection pursuant to this section are subject to the same  
14 requirements governing the disclosure of adult criminal records.

15 (e) Any person who willfully violates this section is guilty of a misdemeanor and, upon  
16 conviction, shall be fined not more than \$1,000, or confined in jail for not more than six months, or  
17 both fined and confined. A person who violates this section is also liable for damages in the amount  
18 of \$300 or actual damages, whichever is greater.

19 **§49-5-104. Confidentiality of juvenile records for children who become of age while a ward  
20 of the state or who have been transferred to adult criminal jurisdiction;  
21 separate and secure location; penalties; damages.**

22 (a) One year after the juvenile's eighteenth birthday, or one year after personal or juvenile

1 jurisdiction has terminated, whichever is later, the records of a juvenile proceeding conducted under  
2 this chapter, including, but not limited to, law-enforcement files and records, may be kept in a  
3 separate secure confidential place and the records may not be inspected except by order of the circuit  
4 court.

5 (b) The records of a juvenile proceeding in which a juvenile was transferred to criminal  
6 jurisdiction pursuant to section seven hundred ten, article four of this chapter shall be kept in a  
7 separate secure confidential place and the records may not be inspected except by order of the circuit  
8 court if the juvenile is subsequently acquitted or found guilty only of an offense other than an offense  
9 upon which the waiver or order of transfer was based, or if the offense upon which the waiver or  
10 order of transfer was based is subsequently dismissed.

11 (c) To keep the confidentiality of juvenile records, they shall be returned to the circuit court  
12 in which the case was pending and be kept in a separate confidential file. The records shall be  
13 physically marked to show that they are to remain confidential and shall be securely kept and filed  
14 in a manner so that no one can have access to determine the identity of the juvenile, except upon  
15 order of the circuit court.

16 (d) Marking the juvenile records to show they are to remain confidential has the legal effect  
17 of extinguishing the offense as if it never occurred.

18 (e) The records of a juvenile convicted under the criminal jurisdiction of the circuit court  
19 pursuant to subdivision (1), subsection (d), section seven hundred ten, article four of this chapter may  
20 not be marked and kept as confidential.

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

1 months, or both so fined and confined, and is liable for damages in the amount of \$300 or actual  
2 damages, whichever is greater.

3 **§49-5-105. Juvenile justice database; individual records confidential.**

4 The West Virginia Supreme Court of Appeals is responsible for collecting, compiling and  
5 disseminating information in the juvenile justice database. Notwithstanding any other provision of  
6 this code to the contrary, the court shall grant the Division of Justice and Community Services access  
7 to confidential juvenile records for the limited purpose of the collection and analysis of statistical  
8 data. However, the division shall keep the records confidential and not publish any information that  
9 would identify any individual juvenile.

10 **ARTICLE 6. MISSING CHILDREN INFORMATION ACT.**

11 **§49-6-101. Clearinghouse function; State Police requirements; rule-making.**

12 (a) The Missing Children Information Clearinghouse is established under the West Virginia  
13 State Police. The State Police:

14 (1) Shall provide for the administration of the clearinghouse; and

15 (2) May promulgate rules in accordance with article three, chapter twenty-nine-a of this code  
16 to carry out the provisions of this article.

17 (b) The clearinghouse is a central repository of information on missing children and shall be  
18 used by all law-enforcement agencies in this state.

19 (c) The clearinghouse shall:

20 (1) Establish a system of intrastate communication of information relating to missing  
21 children;

22 (2) Provide a centralized file for the exchange of information on missing children and

1 unidentified bodies of children within the state;

2 (3) Communicate with the National Crime Information Center for the exchange of  
3 information on missing children suspected of interstate travel;

4 (4) Collect, process, maintain and disseminate accurate and complete information on missing  
5 children;

6 (5) Provide a statewide toll-free telephone line for the reporting of missing children and for  
7 receiving information on missing children;

8 (6) Disseminate to custodians, law-enforcement agencies, the state Department of Education,  
9 the Bureau for Children and Families and the general public information that explains how to prevent  
10 child abduction and what to do if a child becomes missing;

11 (7) Compile statistics relating to the incidence of missing children within the state;

12 (8) Provide training materials and technical assistance to law-enforcement agencies and  
13 social services agencies pertaining to missing children; and

14 (9) Establish a media protocol for disseminating information pertaining to missing children.

15 (d) The clearinghouse shall print and distribute posters, flyers and other forms of information  
16 containing descriptions of missing children.

17 (e) The State Police may accept public or private grants, gifts and donations to assist in  
18 carrying out the provisions of this article.

19 **§49-6-102. State Department of Education; missing children program; rule-making.**

20 (a) The State Department of Education shall develop and administer a program for the  
21 location of missing children who may be enrolled in the West Virginia school system, including  
22 private schools, and for the reporting of children who may be missing or who may be unlawfully

1 removed from schools.

2 (b) The program shall include the use of information received from the clearinghouse and  
3 shall be coordinated with the operations of the clearinghouse.

4 (c) The State Board of Education may promulgate rules in accordance with article three,  
5 chapter twenty-nine-a of this code for the operation of the program and shall require the participation  
6 of all school districts and state-accredited private schools in this state.

7 **§49-6-103. Information to clearinghouse.**

8 Every law-enforcement agency in West Virginia shall provide to the clearinghouse any  
9 information the law-enforcement agency has that would assist in locating or identifying a missing  
10 child.

11 **§49-6-104. Custodian request for information.**

12 (a) Upon written request made to a law-enforcement agency by the custodian of a missing  
13 child, the law-enforcement agency shall request from the clearinghouse information concerning the  
14 child that may aid the custodian in locating or identifying the child.

15 (b) A law-enforcement agency to which a request has been made pursuant to subsection (a)  
16 of this section shall report to the custodian on the results of its inquiry within fourteen calendar days  
17 after the day the written request is received by the law-enforcement agency.

18 **§49-6-105. Missing child report forms; where filed.**

19 (a) The clearinghouse shall distribute missing child report forms to law-enforcement agencies  
20 in the state.

21 (b) A missing child report may be made to a law-enforcement agency in person or by  
22 telephone or other indirect method of communication and the person taking the report may enter the

1 information on the form for the reporter. A missing child report form may be completed by the  
2 reporter and delivered to a law-enforcement office.

3 (c) A copy of the missing child report form shall be filed with the clearinghouse.

4 **§49-6-106. Missing child reports; law-enforcement agency requirements; unidentified bodies.**

5 (a) A law-enforcement agency, upon receiving a missing child report, shall:

6 (1) Immediately start an investigation to determine the present location of the child if it  
7 determines that the child is in danger; and

8 (2) Enter the name of the missing child into the clearinghouse and the national crime  
9 information center missing person file if the child meets the center's criteria, with all available  
10 identifying features, including dental records, fingerprints, other physical characteristics and a  
11 description of the clothing worn when the missing child was last seen.

12 (b) Information not immediately available shall be obtained as soon as possible by the  
13 law-enforcement agency and entered into the clearinghouse and the national crime information center  
14 file as a supplement to the original entry.

15 (c) All West Virginia law-enforcement agencies shall enter information about all unidentified  
16 bodies of children found in their jurisdiction into the clearinghouse and the national crime  
17 information center unidentified person file, including all available identifying features of the body  
18 and a description of the clothing found on the body. If an information entry into the national crime  
19 information center file results in an automatic entry of the information into the clearinghouse,  
20 the law-enforcement agency is not required to make a direct entry of that information into the  
21 clearinghouse.

22 **§49-6-107. Release of dental records; cause shown; immunity.**

1 (a) At the time a missing child report is made, the law-enforcement agency to which the  
2 missing child report is given may, when feasible and appropriate, provide a dental record release  
3 form to the parent, custodian, health care surrogate or other legal entity authorized to release the  
4 dental records of the missing child. The law-enforcement agency shall endorse the dental record  
5 release form with a notation that a missing child report has been made in compliance with this  
6 article. When the dental record release form is properly completed by the parent, custodian, health  
7 care surrogate or other legal entity authorized to release the dental records of the missing child and  
8 contains the endorsement, the form is sufficient to permit a dentist or physician in this state to release  
9 dental records relating to the missing child to the law-enforcement agency.

10 (b) A circuit court judge may for good cause shown authorize the release of dental records  
11 of a missing child to a law-enforcement agency.

12 (c) A law-enforcement agency which receives dental records under subsection (a) or (b) of  
13 this section shall send the dental records to the clearinghouse.

14 (d) A dentist or physician who releases dental records to a person presenting a proper release  
15 executed or ordered pursuant to this section is immune from civil liability or criminal prosecution  
16 for the release of the dental records.

17 **§49-6-108. Cross-checking and matching.**

18 (a) The clearinghouse shall, in accordance with national crime information center policies  
19 and procedures, cross-check and attempt to match unidentified bodies with descriptions of missing  
20 children. When the clearinghouse discovers a possible match between an unidentified body and a  
21 missing child description, the clearinghouse shall notify the appropriate law-enforcement agencies.

22 (b) A law-enforcement agency that receives notice of a possible match shall make



1 arrangements for positive identification. If a positive identification is made, the law-enforcement  
2 agency shall complete and close the investigation with notification to the clearinghouse.

3 **§49-6-109. Interagency cooperation.**

4 (a) State agencies and public and private schools shall cooperate with a law-enforcement  
5 agency that is investigating a missing child report and shall furnish any information, including  
6 confidential information, that will assist the law-enforcement agency in completing the investigation.

7 (b) Information provided by a state agency or a public or private school may not be released  
8 to any person outside the law-enforcement agency or the clearinghouse, except as provided by rules  
9 of the West Virginia State Police.

10 **§49-6-110. Confidentiality of records; rule-making; requirements.**

11 (a) The State Police shall promulgate rules according to article three, chapter twenty-nine-a  
12 of this code to provide for the classification of information and records as confidential that:

13 (1) Are otherwise confidential under state or federal law or rules promulgated pursuant to  
14 state or federal law;

15 (2) Are related to the investigation by a law-enforcement agency of a missing child or an  
16 unidentified body, if the State Police, in consultation with the law-enforcement agency, determines  
17 that release of the information would be deleterious to the investigation;

18 (3) Are records or notations that the clearinghouse maintains for internal use in matters  
19 relating to missing children and unidentified bodies and the State Police determines that release of  
20 the internal documents might interfere with an investigation by a law-enforcement agency in West  
21 Virginia or any other jurisdiction; or

22 (4) Are records or information that the State Police determines might interfere with an

1 investigation or otherwise harm a child or custodian.

2 (b) The rules may provide for the sharing of confidential information with the custodian of  
3 the missing child.

4 **§49-6-111. Attorney general to require compliance.**

5 The Attorney General shall require each law-enforcement agency to comply with the  
6 provisions of the Missing Children Information Act and may seek writs of mandamus or other  
7 appropriate remedies to enforce this article.

8 **§49-6-112. Agencies to receive report; law-enforcement agency requirements.**

9 (a) Upon completion of the missing child report the law-enforcement agency shall  
10 immediately forward the contents of the report to the missing children information clearinghouse and  
11 the national crime information center's missing person file. However, if an information entry into  
12 the national crime information center file results in an automatic entry of the information into the  
13 clearinghouse, the law-enforcement agency is not required to make a direct entry of that information  
14 into the clearinghouse.

15 (b) Within fifteen days after completion of the report, if the child is less than thirteen years  
16 of age the law-enforcement agency may, when appropriate, forward the contents of the report to the  
17 last:

18 (1) Child care center or child care home in which the child was enrolled; or

19 (2) School the child attended in West Virginia, if any.

20 (c) A law-enforcement agency involved in the investigation of a missing child shall:

21 (1) Update the initial report filed by the agency that received notification of the missing child  
22 upon the discovery of new information concerning the investigation;

- 1 (2) Forward the updated report to the appropriate agencies and organizations;
- 2 (3) Search the national crime information center's wanted person file for reports of arrest  
3 warrants issued for persons who allegedly abducted or unlawfully retained children and compare  
4 these reports to the missing child's national crime information center's missing person file; and
- 5 (4) Notify all law-enforcement agencies involved in the investigation, the missing children  
6 information clearinghouse, and the national crime information center when the missing child is  
7 located.

8 **§49-6-113. Clearinghouse Advisory Council; members, appointments and expenses;**  
9 **appointment, duties and compensation of director; annual reports.**

10 (a) The Clearinghouse Advisory Council is continued as a body corporate and politic,  
11 constituting a public corporation and government instrumentality. The council shall consist of  
12 eleven members, who are knowledgeable about and interested in issues relating to missing or  
13 exploited children, as follows:

14 (1) Six members to be appointed by the Governor, with the advice and consent of the Senate,  
15 with not more than four belonging to the same political party, three being from different  
16 congressional districts of the state and, as nearly as possible, providing broad state geographical  
17 distribution of members of the council, and at least one representing a nonprofit organization  
18 involved with preventing the abduction, runaway or exploitation of children or locating missing  
19 children;

20 (2) The Secretary of the Department of Health and Human Resources or his or her designee;

21 (3) The Superintendent of the West Virginia State Police or his or her designee;

22 (4) The State Superintendent of Schools or his or her designee;

1 (5) The Director of the Criminal Justice and Highway Safety Division or his or her designee;  
2 and

3 (6) The Commissioner of the Bureau for Children and Families or his or her designee.

4 (b) The Governor shall appoint the six council members for staggered terms. The terms of  
5 the members first taking office on or after the effective date of this legislation shall expire as  
6 designated by the Governor. Each subsequent appointment shall be for a full three-year term. Any  
7 appointed member whose term is expired shall serve until a successor has been duly appointed and  
8 qualified. Any person appointed to fill a vacancy may serve only for the unexpired term. A member  
9 is eligible for only one successive reappointment. A vacancy shall be filled by the Governor in the  
10 same manner as the original appointment was made.

11 (c) Members of the council are not entitled to compensation for services performed as  
12 members but are entitled to reimbursement for all reasonable and necessary expenses actually  
13 incurred in the performance of their duties in a manner consistent with the guidelines of the Travel  
14 Management Office of the Department of Administration.

15 (d) A majority of serving members constitutes a quorum for the purpose of conducting  
16 business. The chair of the council shall be designated by the Governor from among the appointed  
17 council members who represent nonprofit organizations involved with preventing the abduction,  
18 runaway or exploitation of children or locating missing children. The term of the chair shall run  
19 concurrently with his or her term of office as a member of the council. The council shall conduct  
20 all meetings in accordance with the open governmental meetings law pursuant to article nine-a,  
21 chapter six of this code.

22 (e) The employee of the West Virginia State Police who is primarily responsible for the

1 clearinghouse established by section one hundred and one of this article shall serve as the executive  
2 director of the council. He or she shall receive no additional compensation for service as the  
3 executive director of the council but shall be reimbursed for any reasonable and necessary expenses  
4 actually incurred in the performance of his or her duties as executive director in a manner consistent  
5 with the guidelines of the travel management office of the Department of Administration.

6 (f) The expenses of council members and the executive director shall be reimbursed from  
7 funds provided by foundation grants, in-kind contributions or funds obtained pursuant to subsection  
8 (b), section one hundred fifteen of this article.

9 (g) The executive director shall provide or obtain information necessary to support the  
10 administrative work of the council and, to that end, may contract with one or more nonprofit  
11 organizations or state agencies for research and administrative support.

12 (h) The executive director of the council shall be available to the Governor and to the  
13 Speaker of the House of Delegates and the President of the Senate to analyze and comment upon  
14 proposed legislation and rules which relate to or materially affect missing or exploited children.

15 (i) The council shall prepare and publish an annual report of its activities and  
16 accomplishments and submit it to the Governor and to the Joint Committee on Government and  
17 Finance on or before December 15 of each year.

18 **§49-6-114. Powers and duties of clearinghouse advisory council; comprehensive strategic plan**  
19 **required to be provided to the Legislature.**

20 The council shall prepare a comprehensive strategic plan and recommendation of programs  
21 in furtherance thereof that will support efforts to prevent the abduction, runaway and exploitation,  
22 or any thereof, of children to locate missing children; advise the West Virginia State Police

1 regarding operation of the clearinghouse and its other responsibilities under this article; and  
2 cooperate with and coordinate the efforts of state agencies and private organizations involved with  
3 issues relating to missing or exploited children. The council may seek public and private grants,  
4 contracts, matching funds and procurement arrangements from the state and federal government,  
5 private industry and other agencies in furtherance of its mission and programs. An initial  
6 comprehensive strategic plan that will support and foster efforts to prevent the abduction, runaway  
7 and exploitation of children and to locate missing children shall be developed and provided to the  
8 Governor, the Speaker of the House of Delegates and the President of the Senate no later than July  
9 1, 2015, and shall include, but not be limited to, the following:

10 (1) Findings and determinations regarding the extent of the problem in this state related to:

11 (A) Abducted children; (B) runaway children; and (C) exploited children;

12 (2) Findings and determinations identifying the systems, both public and private, existing in  
13 the state to prevent the abduction, runaway or exploitation of children and to locate missing children  
14 and assessing the strengths and weaknesses of those systems and the clearinghouse;

15 (3) The inclusion of exploited children within the functions of the clearinghouse. For  
16 purposes of this article, an exploited child is a person under the age of eighteen years who has been:

17 (A) Used in the production of pornography; (B) subjected to sexual exploitation or sexual offenses  
18 under article eight-b, chapter sixty-one of this code; or (C) employed or exhibited in any injurious,  
19 immoral or dangerous business or occupation in violation of sections five through eight, article eight,  
20 chapter sixty-one of this code;

21 (4) Recommendations of legislative changes required to improve the effectiveness of the  
22 clearinghouse and other efforts to prevent abduction, runaway or exploitation of children and to

- 1 locate missing children. Those recommendations shall consider the following:
- 2 (A) Interaction of the clearinghouse with child custody proceedings;
- 3 (B) Involvement of hospitals, child care centers and other private agencies in efforts to  
4 prevent child abduction, runaway or exploitation and to locate missing children;
- 5 (C) Publication of a directory of and periodic reports regarding missing children;
- 6 (D) Required reporting by public and private agencies and penalties for failure to report and  
7 false reporting;
- 8 (E) Removal of names from the list of missing children;
- 9 (F) Creating of an advocate for missing and exploited children;
- 10 (G) State funding for the clearinghouse and efforts to prevent the abduction, runaway and  
11 exploitation of children and to locate missing children;
- 12 (H) Mandated involvement of state agencies, such as publication of information regarding  
13 missing children in existing state publications and coordination with the state registrar of vital  
14 statistics under section twelve, article five, chapter sixteen of this code; and
- 15 (I) Expanded requirement for boards of education to notify the clearinghouse in addition to  
16 local law-enforcement agencies under section five-c, article two, chapter eighteen of this code or if  
17 a birth certificate or school record received appears to be inaccurate or fraudulent and to receive  
18 clearinghouse approval before releasing records;
- 19 (5) Methods that will coordinate and engender collaborative efforts among organizations  
20 throughout the state, whether public or private, involved with missing or exploited children;
- 21 (6) Plans for the use of technology in the clearinghouse and other efforts related to missing  
22 or exploited children;

1 (7) Compliance of the clearinghouse, state law and all rules promulgated pursuant thereto  
2 with applicable federal law so as to enhance opportunities for receiving federal grants;

3 (8) Consultation with the State Board of Education and other agencies responsible for  
4 promulgating rules under this article;

5 (9) Possible methods for identifying missing children prior to enrollment in a public or  
6 nonpublic school;

7 (10) The feasibility and effectiveness of utilizing the federal parent locator service in locating  
8 missing children; and

9 (11) Programs for voluntary fingerprinting.

10 **§49-6-115. Public-private partnerships; funding.**

11 (a) In furtherance of its mission, the clearinghouse council is authorized to enter into  
12 contracts or joint venture agreements with federal and state agencies; with nonprofit corporations  
13 organized pursuant to the corporate laws of this state or other jurisdictions that are qualified under  
14 Section 501(c)(3) of the Internal Revenue Code; and with other organizations that conduct research,  
15 make grants, improve educational programs and work for the prevention of missing or exploited  
16 children and to locate missing children. All contracts and joint venture agreements must be  
17 approved by a majority vote of the council. The council may also enter into contractual agreements  
18 for consideration or recompense to it even though the entities are funded from sources other than the  
19 state. Members of the council are not prohibited from sitting on the boards of directors of any  
20 contracting private nonprofit corporation, foundation or firm. However, members of the council are  
21 not exempt from chapter six-b of this code.

22 (b) The council shall solicit and is authorized to receive and accept gifts or grants from



1 private foundations, corporations, individuals, devises and bequests or from other lawful sources.  
2 The funds shall be paid into a special account in the State Treasury for the use and benefit of the  
3 council.

4 **ARTICLE 7. INTERSTATE COOPERATION.**

5 PART I. INTERSTATE COMPACT

6 ON THE PLACEMENT OF CHILDREN.

7 **§49-7-101. Adoption of compact.**

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

10 INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

11 ARTICLE I.

12 PURPOSE AND POLICY.

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

15 (a) Each child requiring placement shall receive the maximum opportunity to be placed in  
16 a suitable environment and with persons or institutions having appropriate qualifications and  
17 facilities to provide a necessary and desirable degree and type of care.

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

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

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

2 ARTICLE II.

3 DEFINITIONS.

4 As used in this compact:

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

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

11 (c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent  
12 or brought, whether by public authorities or private persons or agencies, and whether for placement  
13 with state or local public authorities or for placement with private agencies or persons.

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

18 ARTICLE III.

19 CONDITIONS FOR REPLACEMENT.

20 (a) No sending agency shall send, bring, or cause to be sent or brought into any other party  
21 state any child for placement in foster care or as a preliminary to a possible adoption unless the  
22 sending agency shall comply with each and every requirement set forth in this article and with the

1 applicable laws of the receiving state governing the placement of children therein.

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

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

7 (2) The identity and address or addresses of the parents or legal guardian.

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

10 (4) A full statement of the reasons for the proposed action and evidence of the authority  
11 pursuant to which the placement is proposed to be made.

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

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

21 ARTICLE IV.

22 PENALTY FOR ILLEGAL PLACEMENT.

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

9 ARTICLE V.

10 RETENTION OF JURISDICTION.

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

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

1 (c) Nothing in this compact shall be construed to prevent a private charitable agency  
2 authorized to place children in the receiving state from performing services or acting as agent in that  
3 state for a private charitable agency of the sending state; nor to prevent the agency in the receiving  
4 state from discharging financial responsibility for the support and maintenance of a child who has  
5 been placed on behalf of the sending agency without relieving the responsibility set forth in  
6 paragraph (a) hereof.

7 ARTICLE VI.

8 INSTITUTIONAL CARE OF DELINQUENT CHILDREN.

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

- 13 1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and
- 14 2. Institutional care in the other jurisdiction is in the best interest of the child and will not  
15 produce undue hardship.

16 ARTICLE VII.

17 COMPACT ADMINISTRATOR.

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

22 ARTICLE VIII.

1 LIMITATIONS.

2 This compact shall not apply to:

3 (a) The sending or bringing of a child into a receiving state by his or her parent, stepparent,  
4 grandparent, adult brother or sister, adult uncle or aunt, or his or her guardian and leaving the child  
5 with a relative or nonagency guardian in the receiving state.

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

9 ARTICLE IX.

10 ENACTMENT AND WITHDRAWAL.

11 This compact shall be open to joinder by any state, territory or possession of the United  
12 States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of  
13 Congress, the government of Canada or any province thereof. It shall become effective with respect  
14 to those jurisdictions when that other jurisdiction has enacted the same into law. Withdrawal from  
15 this compact shall be by the enactment of a statute repealing the same, but shall not take effect until  
16 two years after the effective date of the statute and until written notice of the withdrawal has been  
17 given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a  
18 party state shall not affect the rights, duties and obligations under this compact of any sending agency  
19 therein with respect to a placement made prior to the effective date of withdrawal.

20 ARTICLE X.

21 CONSTRUCTION.

22 The provisions of this compact shall be liberally construed to effectuate the purposes thereof.

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

8 **§49-7-102. Definitions; implementation.**

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

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

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

20 (d) The officers and agencies of this state and its subdivisions having authority to place  
21 children are hereby empowered to enter into agreements with appropriate officers or agencies of or  
22 in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the

1 Placement of Children. An agreement which contains a financial commitment or imposes a financial  
2 obligation on this state or subdivision or agency thereof is not binding unless it has the approval in  
3 writing of the Auditor in the case of the state and of the chief local fiscal officer in the case of a  
4 subdivision of the state.

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

10 (f) Section one hundred nine, article two of this chapter does not apply to placements made  
11 pursuant to the Interstate Compact on the Placement of Children.

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

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

18 PART II. INTERSTATE ADOPTION ASSISTANCE COMPACT.

19 **§49-7-201. Interstate adoption assistance compact; findings and purpose.**

20 (a) The Legislature finds that:

21 (1) Finding adoptive families for children, for whom state assistance is desirable pursuant  
22 to section one hundred twelve, article four, of this chapter and assuring the protection of the interests



1 of the children affected during the entire assistance period, require special measures when the  
2 adoptive parents move to other states or are residents of another state; and

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

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

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

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

12 **§49-7-202. Interstate adoption assistance compacts authorized; definitions.**

13 (a) The Department of Health and Human Resources is authorized to develop, participate in  
14 the development of, negotiate and enter into one or more interstate compacts on behalf of this state  
15 with other states to implement one or more of the purposes set forth in sections two hundred one  
16 through two hundred four of this article. When so entered into, and for so long as it shall remain in  
17 force, the compact shall have the force and effect of law.

18 (b) For the purposes of sections two hundred one through two hundred four of this article,  
19 the term "state" means a state of the United States, the District of Columbia, the Commonwealth of  
20 Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a  
21 Territory or Possession of or administered by the United States.

22 (c) For the purposes of sections two hundred one through two hundred four of this article,

1 the term "adoption assistance state" means the state that is signatory to an adoption assistance  
2 agreement in a particular case.

3 (d) For the purposes of sections two hundred one through two hundred four of this article,  
4 the term "residence state" means the state of which the child is a resident by virtue of the residence  
5 of the adoptive parents.

6 **§49-7-203. Interstate adoption assistance compact; contents of compact.**

7 A compact entered into pursuant to the authority conferred by sections two hundred one  
8 through two hundred four of this article shall have the following content:

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

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

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

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

22 (5) Other provisions as may be appropriate to implement the proper administration of the

1 compact.

2 **§49-7-204. Medical assistance for children with special needs; rule-making; penalties.**

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

9 (b) The Department of Health and Human Resources shall consider the holder of a medical  
10 assistance identification pursuant to this section as any other holder of a medical assistance  
11 identification under the laws of this state and shall process and make payment on claims on account  
12 of the holder in the same manner and pursuant to the same conditions and procedures as for other  
13 recipients of medical assistance.

14 (c) The Department of Health and Human Resources shall provide coverage and benefits for  
15 a child who is in another state and who is covered by an adoption assistance agreement made by the  
16 Department of Health and Human Resources for the coverage or benefits, if any, not provided by the  
17 residence state. To this end, the adoptive parents acting for the child may submit evidence of  
18 payment for services or benefit amounts not payable in the residence state and shall be reimbursed  
19 therefor. However, there may be no reimbursement for services or benefit amounts covered under  
20 any insurance or other third party medical contract or arrangement held by the child or the adoptive  
21 parents. The Department of Health and Human Resources shall propose rules in accordance with  
22 article three, chapter twenty-nine-a of this code that are necessary to effectuate the requirements and

1 purposes of this section. The additional coverages and benefit amounts provided pursuant to this  
2 section shall be for services to the cost of which there is no federal contribution, or which, if  
3 federally aided, are not provided by the residence state. Among other things, the regulations shall  
4 include procedures to be followed in obtaining prior approvals for services in those instances where  
5 required for the assistance.

6 (d) Any person who submits a claim for payment or reimbursement for services or benefits  
7 pursuant to this section or the making of any statement in connection therewith, which claim of  
8 statement the maker knows or should know to be false, misleading or fraudulent is guilty of a felony  
9 and, upon conviction, shall be fined not more than \$10,000, or incarcerated in a correctional facility  
10 not more than two years, or both fined and incarcerated.

11 (e) This section applies only to medical assistance for children under adoption assistance  
12 agreements from states that have entered into a compact with this state under which the other state  
13 provides medical assistance to children with special needs under adoption assistance agreements  
14 made by this state. All other children entitled to medical assistance pursuant to adoption assistance  
15 agreements entered into by this state shall be eligible to receive it in accordance with the laws and  
16 procedures applicable thereto.

17 PART III. INTERSTATE COMPACT FOR JUVENILES.

18 **§49-7-301. Execution of interstate compact for juveniles.**

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

22 INTERSTATE COMPACT FOR JUVENILES

1 ARTICLE I.

2 PURPOSE.

3 (a) The compacting states to this interstate compact recognize that each state is responsible  
4 for the proper supervision or return of juveniles, delinquents and status offenders who are on  
5 probation or parole and who have absconded, escaped or run away from supervision and control and  
6 in so doing have endangered their own safety and the safety of others. The compacting states also  
7 recognize that each state is responsible for the safe return of juveniles who have run away from home  
8 and in doing so have left their state of residence. The compacting states also recognize that  
9 Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and  
10 encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

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

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

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

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

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

22 (5) To provide for the effective tracking and supervision of juveniles;

- 1           (6) To equitably allocate the costs, benefits and obligations of the compacting states;
- 2           (7) To establish procedures to manage the movement between states of juvenile offenders  
3 released to the community under the jurisdiction of courts, juvenile departments, or any other  
4 criminal or juvenile justice agency which has jurisdiction over juvenile offenders;
- 5           (8) To ensure immediate notice to jurisdictions where defined offenders are authorized to  
6 travel or to relocate across state lines;
- 7           (9) To establish procedures to resolve pending charges (detainers) against juvenile offenders  
8 prior to transfer or release to the community under the terms of this compact;
- 9           (10) To establish a system of uniform data collection on information pertaining to juveniles  
10 subject to this compact that allows access by authorized juvenile justice and criminal justice officials,  
11 and regular reporting of compact activities to heads of state executive, judicial, and legislative  
12 branches and juvenile and criminal justice administrators;
- 13           (11) To monitor compliance with rules governing interstate movement of juveniles and  
14 initiate interventions to address and correct noncompliance;
- 15           (12) To coordinate training and education regarding the regulation of interstate movement  
16 of juveniles for officials involved in the activity; and
- 17           (13) To coordinate the implementation and operation of the compact with the interstate  
18 compact for the placement of children, the interstate compact for adult offender supervision and  
19 other compacts affecting juveniles, particularly in those cases where concurrent or overlapping  
20 supervision issues arise.
- 21           (c) It is the policy of the compacting states that the activities conducted by the interstate  
22 commission created herein are the formation of public policies and therefore are public business.

1 Furthermore, the compacting states shall cooperate and observe their individual and collective duties  
2 and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this  
3 compact. The provisions of this compact shall be reasonably and liberally construed to accomplish  
4 the purposes and policies of the compact.

5 ARTICLE II.

6 DEFINITIONS.

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

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

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

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

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

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

20 (f) "Deputy compact administrator" means the individual, if any, in each compacting state  
21 appointed to act on behalf of a compact administrator pursuant to the terms of this compact  
22 responsible for the administration and management of the state's supervision and transfer of juveniles

1 subject to the terms of this compact, the rules adopted by the interstate commission and policies  
2 adopted by the state council under this compact.

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

5 (h) "Juvenile" means any person defined as a juvenile in any member state or by the rules of  
6 the interstate commission, including:

7 (1) Accused delinquent – a person charged with an offense that, if committed by an adult,  
8 would be a criminal offense; (2) Adjudicated delinquent – a person found to have committed an  
9 offense that, if committed by an adult, would be a criminal offense;

10 (3) Accused status offender – a person charged with an offense that would not be a criminal  
11 offense if committed by an adult;

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

14 (i) Nonoffender – a person in need of supervision who has not been accused or adjudicated  
15 a status offender or delinquent.

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

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

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



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

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

## 6 ARTICLE III.

### 7 INTERSTATE COMMISSION FOR JUVENILES.

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

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

19 (c) In addition to the commissioners who are the voting representatives of each state, the  
20 interstate commission shall include individuals who are not commissioners, but who are members  
21 of interested organizations. The noncommissioner members must include a member of the national  
22 organizations of Governors, legislators, state chief justices, attorneys general, interstate compact for

1 adult offender supervision, interstate compact for the placement of children, juvenile justice and  
2 juvenile corrections officials, and crime victims. All noncommissioner members of the interstate  
3 commission shall be ex officio (nonvoting) members. The interstate commission may provide in its  
4 bylaws for the additional ex officio (nonvoting) members, including members of other national  
5 organizations, in such numbers as shall be determined by the commission.

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

9 (e) The commission shall meet at least once each calendar year. The chairperson may call  
10 additional meetings and, upon the request of a simple majority of the compacting states, shall call  
11 additional meetings. Public notice shall be given of all meetings and meetings shall be open to the  
12 public.

13 (f) The interstate commission shall establish an executive committee, which shall include  
14 commission officers, members, and others as determined by the bylaws. The executive committee  
15 shall have the power to act on behalf of the interstate commission during periods when the interstate  
16 commission is not in session, with the exception of rule making and/or amendment to the compact.  
17 The executive committee shall oversee the day-to-day activities of the administration of the compact  
18 managed by an executive director and interstate commission staff; administers enforcement and  
19 compliance with the provisions of the compact, its bylaws and rules, and performs other duties as  
20 directed by the interstate commission or set forth in the bylaws.

21 (g) Each member of the interstate commission shall have the right and power to cast a vote  
22 to which that compacting state is entitled and to participate in the business and affairs of the

1 interstate commission. A member shall vote in person and shall not delegate a vote to another  
2 compacting state. However, a commissioner, in consultation with the state council, shall appoint  
3 another authorized representative, in the absence of the commissioner from that state, to cast a vote  
4 on behalf of the compacting state at a specified meeting. The bylaws may provide for members'  
5 participation in meetings by telephone or other means of telecommunication or electronic  
6 communication.

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

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

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

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

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

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

21 (5) Disclose information of a personal nature where disclosure would constitute a clearly  
22 unwarranted invasion of personal privacy;

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

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

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

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

9 (j) For every meeting closed pursuant to subsection (i) of this section, the interstate  
10 commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may  
11 be closed to the public, and shall reference each relevant exemptive provision. The interstate  
12 commission shall keep minutes which shall fully and clearly describe all matters discussed in any  
13 meeting and shall provide a full and accurate summary of any actions taken, and the reasons  
14 therefore, including a description of each of the views expressed on any item and the record of any  
15 roll call vote (reflected in the vote of each member on the question). All documents considered in  
16 connection with any action shall be identified in the minutes.

17 (k) The interstate commission shall collect standardized data concerning the interstate  
18 movement of juveniles as directed through its rules which shall specify the data to be collected, the  
19 means of collection and data exchange and reporting requirements. The methods of data collection,  
20 exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and  
21 coordinate its information functions with the appropriate repository of records.

22 ARTICLE IV.

1 POWERS AND DUTIES OF THE INTERSTATE COMMISSION.

2 The interstate commission shall have the following powers and duties:

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

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

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

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

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

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

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

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

20 (i) To elect or appoint officers, attorneys, employees, agents, or consultants, and to fix their  
21 compensation, define their duties and determine their qualifications.

22 (j) To establish the interstate commission's personnel policies and programs relating to, inter

- 1 alia, conflicts of interest, rates of compensation, and qualifications of personnel.
- 2 (k) To accept any and all donations and grants of money, equipment, supplies, materials, and  
3 services, and to receive, utilize, and dispose of it.
- 4 (l) To lease, purchase, accept contributions or donations of, or otherwise to own, hold,  
5 improve or use any property, real, personal, or mixed.
- 6 (m) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any  
7 property, real, personal or mixed.
- 8 (n) To establish a budget and make expenditures and levy dues as provided in Article VIII  
9 of this compact.
- 10 (o) To sue and be sued.
- 11 (p) To adopt a seal and bylaws governing the management and operation of the interstate  
12 commission.
- 13 (q) To perform functions as may be necessary or appropriate to achieve the purposes of this  
14 compact.
- 15 (r) To report annually to the Legislatures, Governors, judiciary, and state councils of the  
16 compacting states concerning the activities of the interstate commission during the preceding year.  
17 Reports shall also include any recommendations that may have been adopted by the interstate  
18 commission.
- 19 (s) To coordinate education, training and public awareness regarding the interstate movement  
20 of juveniles for officials involved in the activity.
- 21 (t) To establish uniform standards of the reporting, collecting and exchanging of data.
- 22 (u) The interstate commission shall maintain its corporate books and records in accordance

1 with the bylaws.

2 ARTICLE V.

3 ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION.

4 Section A. Bylaws.

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

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

10 (2) Establish an executive committee and the other committees as may be necessary to;

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

13 (4) Provide reasonable procedures for calling and conducting meetings of the interstate  
14 commission, and ensure reasonable notice of each meeting;

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

16 (6) Provide a mechanism for concluding the operations of the interstate commission and the  
17 return of any surplus funds that may exist upon the termination of the compact after the payment  
18 and/or reserving of all of its debts and obligations.

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

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

22 Section B. Officers and Staff.

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

9           (2) The interstate commission shall, through its executive committee, appoint or retain an  
10 executive director for such period, upon terms and conditions and compensation as the interstate  
11 commission may deem appropriate. The executive director shall serve as secretary to the interstate  
12 commission, but shall not be a member and shall hire and supervise other staff as may be authorized  
13 by the interstate commission.

14 Section C. Qualified Immunity, Defense and Indemnification.

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

22           (2) The liability of any commissioner, or the employee or agent of a commissioner, acting



1 within the scope of a person's employment or duties for acts, errors, or omissions occurring within  
2 such person's state may not exceed the limits of liability set forth under the Constitution and laws  
3 of that state for state officials, employees, and agents. Nothing in this subsection shall be construed  
4 to protect a person from suit or liability for any damage, loss, injury, or liability caused by the  
5 intentional or willful and wanton misconduct of a person.

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

15 (4) The interstate commission shall indemnify and hold the commissioner of a compacting  
16 state, or the commissioner's representatives or employees, or the interstate commission's  
17 representatives or employees, harmless in the amount of any settlement or judgment obtained against  
18 such persons arising out of any actual or alleged act, error, or omission that occurred within the scope  
19 of interstate commission employment, duties, or responsibilities, or that such persons had a  
20 reasonable basis for believing occurred within the scope of interstate commission employment,  
21 duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result  
22 from intentional or willful and wanton misconduct on the part of such persons.

1 ARTICLE VI.

2 RULE-MAKING FUNCTIONS OF THE INTERSTATE COMMISSION.

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

5 (b) Rule making shall occur pursuant to the criteria set forth in this article and the bylaws and  
6 rules adopted pursuant thereto. Such rule making shall substantially conform to the principles of the  
7 "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1  
8 (2000), or such other administrative procedures act, as the interstate commission deems appropriate  
9 consistent with due process requirements under the U.S. Constitution as now or hereafter interpreted  
10 by the U.S. Supreme Court. All rules and amendments shall become binding as of the date specified,  
11 as published with the final version of the rule as approved by the commission.

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

13 (1) Publish the proposed rule's entire text stating the reason(s) for that proposed rule;

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

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

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

20 (d) Allow, not later than sixty days after a rule is promulgated, any interested person to file  
21 a petition in the United States District Court for the District of Columbia or in the federal district  
22 court where the interstate commission's principal office is located for judicial review of such rule.

1 If the court finds that the interstate commission's action is not supported by substantial evidence in  
2 the rule-making record, the court shall hold the rule unlawful and set it aside. For purposes of this  
3 subsection, evidence is substantial if it would be considered substantial evidence under the Model  
4 State Administrative Procedures Act.

5 (e) If a majority of the Legislatures of the compacting states rejects a rule, those states may,  
6 by enactment of a statute or resolution in the same manner used to adopt the compact, cause that  
7 such rule shall have no further force and effect in any compacting state.

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

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

16 ARTICLE VII.

17 OVERSIGHT, ENFORCEMENT AND DISPUTE

18 SOLUTION BY THE INTERSTATE COMMISSION.

19 Section A. Oversight.

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

1 compacting states.

2 (2) The courts and executive agencies in each compacting state shall enforce this compact  
3 and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent.

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

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

12 Section B. Dispute Resolution.

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

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

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

1 ARTICLE VIII.

2 FINANCE.

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

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

13 (c) The interstate commission shall not incur any obligations of any kind prior to securing  
14 the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of  
15 the compacting states, except by and with the authority of the compacting state.

16 (d) The interstate commission shall keep accurate accounts of all receipts and disbursements.  
17 The receipts and disbursements of the interstate commission shall be subject to the audit and  
18 accounting procedures established under its bylaws. However, all receipts and disbursements of  
19 funds handled by the interstate commission shall be audited yearly by a certified or licensed public  
20 accountant and the report of the audit shall be included in and become part of the annual report of  
21 the interstate commission.

22 ARTICLE IX.

1 THE STATE COUNCIL.

2           Each member state shall create a state council for interstate juvenile supervision. While each  
3 state may determine the membership of its own state council, its membership must include at least  
4 one representative from the legislative, judicial, and executive branches of government, victims  
5 groups, and the compact administrator, deputy compact administrator or designee. Each compacting  
6 state retains the right to determine the qualifications of the compact administrator or deputy compact  
7 administrator. Each state council will advise and may exercise oversight and advocacy concerning  
8 that state's participation in interstate commission activities and other duties as may be determined  
9 by that state, including, but not limited to, development of policy concerning operations and  
10 procedures of the compact within that state.

11 ARTICLE X.

12 COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT.

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

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

1 (c) The interstate commission may propose amendments to the compact for enactment by the  
2 compacting states. No amendment shall become effective and binding upon the interstate  
3 commission and the compacting states unless and until it is enacted into law by unanimous consent  
4 of the compacting states.

5 ARTICLE XI.

6 WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT.

7 Section A. Withdrawal.

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

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

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

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

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

22 Section B. Technical Assistance, Fines, Suspension, Termination and Default.

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

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

6 (B) Alternative dispute resolution;

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

9 (D) Suspension or termination of membership in the compact shall be imposed only after all  
10 other reasonable means of securing compliance under the bylaws and rules have been exhausted and  
11 the interstate commission has therefore determined that the offending state is in default. Immediate  
12 notice of suspension shall be given by the interstate commission to the Governor, the chief justice  
13 or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's  
14 Legislature, and the state council.

15 (2) The grounds for default include, but are not limited to, failure of a compacting state to  
16 perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or duly  
17 promulgated rules and any other grounds designated in commission bylaws and rules.

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

20 (4) The commission shall stipulate the conditions and the time period within which the  
21 defaulting state must cure its default. If the defaulting state fails to cure the default within the time  
22 period specified by the commission, the defaulting state shall be terminated from the compact upon



1 an affirmative vote of a majority of the compacting states and all rights, privileges and benefits  
2 conferred by this compact shall be terminated from the effective date of termination.

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

6 (6) The defaulting state is responsible for all assessments, obligations and liabilities incurred  
7 through the effective date of termination including any obligations, the performance of which  
8 extends beyond the effective date of termination.

9 (7) The interstate commission shall not bear any costs relating to the defaulting state unless  
10 otherwise mutually agreed upon in writing between the interstate commission and the defaulting  
11 state.

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

#### 15 Section C. Judicial Enforcement.

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

#### 22 Section D. Dissolution of Compact.

1 (d)(1) The compact dissolves effective upon the date of the withdrawal or default of the  
2 compacting state, which reduces membership in the compact to one compacting state.

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

6 ARTICLE XII.

7 SEVERABILITY AND CONSTRUCTION.

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

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

11 ARTICLE XIII.

12 BINDING EFFECT OF COMPACT AND OTHER LAWS.

13 Section A. Other Laws.

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

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

18 Section B. Binding Effect of the Compact.

19 (b)(1) All lawful actions of the interstate commission, including all rules and bylaws  
20 promulgated by the interstate commission, are binding upon the compacting states.

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

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

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

10 **§49-7-302. State council for interstate juvenile supervision; members; authority.**

11 (a) Upon the effective date of the interstate compact for juveniles, there shall be created a  
12 state council for interstate juvenile supervision. The state council shall be comprised of a total of  
13 nine members, to be selected and designated as follows:

14 (1) Two members designated by the Legislature, one of whom shall be named and appointed  
15 by the Speaker of the House, and the other of whom shall be designated by the President of the  
16 Senate;

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

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

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

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

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

9 **§49-7-303. Appointment of compact administrator.**

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

21 (b) Until the state council has met and established minimum qualifications for the position  
22 of compact administrator the individual or administrator who has been designated to act as the

1 juvenile compact administrator for the interstate compact for juveniles may perform the duties and  
2 responsibilities of compact administrator under this article.

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

8 **§49-7-304. Notification of the effective date of the interstate compact for juveniles.**

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

NOTE: The purpose of this bill is to revise, rearrange, consolidate and recodify the laws of the State of West Virginia relating to child welfare and juvenile disposition.

Chapter 49 of the Code of West Virginia has been completely rewritten; therefore, strike-throughs and underscoring have been omitted.

This bill was recommended for introduction and passage by the West Virginia Judiciary's Court Improvement Board. It is the product of a bi-partisan effort of all the stakeholders to streamline the child welfare laws in this state.