

E N G R O S S E D

H. B. 2200

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[Introduced January 21, 2015; referred to the Committee on the Judiciary;
and then to the Committee on Finance.]

A BILL to amend and reenact chapter forty-nine of the Code of West Virginia, 1931, as amended, all relating to revising, rearranging, consolidating and recodifying the laws of the State of West Virginia relating to child welfare; and removing outdated language and to comply with court rulings concerning child welfare.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

PART I. GENERAL PROVISIONS AND PURPOSE.

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

- 1 (a) This chapter shall be known and may be cited as the
2 “West Virginia Child Welfare Act.”
- 3 (b) The recodification of this chapter during the regular
4 session of the Legislature in the year 2015 is intended to
5 embrace in a revised, consolidated, and codified form and
6 arrangement the laws of the State of West Virginia relating to
7 child welfare at the time of that enactment.

§49-1-102. Legislative Intent; continuation of existing statutory provisions; no increase in funding obligations.

- 1 In recodifying the child welfare law of this state during the
2 regular session of the Legislature in the year 2015, it is intended
3 by the Legislature that each specific reenactment of a
4 substantively similar prior statutory provision will be construed
5 as continuing the intended meaning of the corresponding prior
6 statutory provision and any existing judicial interpretation of the
7 prior statutory provision. It is not the intent of the Legislature, by
8 recodifying the child welfare law of this state during the regular
9 session of the Legislature in the year 2015 to alter the

10 substantive law of this state as it relates to child welfare or to
11 increase or enlarge any funding obligation of any spending unit
12 of the state.

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

1 The amendment and reenactment of chapter forty-nine of
2 this code, as enacted by the Legislature during the regular
3 session, 2015, are operative on September 1, 2015. The prior
4 enactments of chapter forty-nine of this code, whether amended
5 and reenacted or repealed by the action of the Legislature during
6 the 2015 regular session, have full force and effect until that
7 time.

§49-1-104. West Virginia Code replacement; no increase of funding obligations to be construed.

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

8 (b) No provision of the recodification of this chapter during
9 the 2015 regular session of the Legislature may be construed to
10 increase or enlarge any funding obligation of any spending unit
11 of the state.

§49-1-105. Purpose.

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

5 (b) The child welfare and juvenile justice system shall:
6 (1) Assure each child care, safety and guidance;
7 (2) Serve the mental and physical welfare of the child;
8 (3) Preserve and strengthen the child family ties;
9 (4) Recognize the fundamental rights of children and
10 parents;

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

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

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

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

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

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

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

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

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

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

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

1 (a) The child welfare service of the state shall be located
2 within and administered by the Department of Health and
3 Human Resources. The Division of Juvenile Services of the
4 Department of Military Affairs and Public Safety shall
5 administer the secure predispositional juvenile detention and
6 juvenile correctional facilities of the state. Notwithstanding any
7 other provision of this code to the contrary, the administrative
8 authority of the Division of Juvenile Services over any child or
9 juvenile in this state extends only to those detained or committed
10 to a secure detention facility or secure correctional facility
11 operated and maintained by the division by an order of a court of

12 competent jurisdiction during the period of actual detention or
13 confinement in the facility.

14 (b) The Department of Health and Human Resources is
15 designated as the state entity to cooperate with the United States
16 Department of Health and Human Services and United States
17 Department of Justice in extending and improving child welfare
18 services, to comply with federal regulations, and to receive and
19 expend federal funds for these services. The Division of Juvenile
20 Services of the Department of Military Affairs and Public Safety
21 is designated as the state entity to cooperate with the United
22 States Department of Health and Human Services and United
23 States Department of Justice in operating, maintaining and
24 improving juvenile correction facilities and centers for the
25 predispositional detention of children, to comply with federal
26 regulations, and to receive and expend federal funds for these
27 services.

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

PART II. DEFINITIONS.

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

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

6 “Abandonment” means any conduct that demonstrates the
7 settled purpose to forego the duties and parental responsibilities
8 to the child;

9 “Abused child” means a child whose health or welfare is
10 being harmed or threatened by:

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

17 (B) Sexual abuse or sexual exploitation;

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

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

23 “Abusing parent” means a parent, guardian or other
24 custodian, regardless of his or her age, whose conduct has been
25 adjudicated by the court to constitute child abuse or neglect as
26 alleged in the petition charging child abuse or neglect.

27 “Battered parent,” for the purposes of part seven, article two
28 of this chapter, means a respondent parent, guardian, or other
29 custodian who has been adjudicated by the court to have not
30 condoned the abuse or neglect and has not been able to stop the
31 abuse or neglect of the child or children due to being the victim
32 of domestic violence as defined by section two hundred two,
33 article twenty-seven, chapter forty-eight of this code which was
34 perpetrated by the same person or persons determined to have
35 abused or neglected the child or children.

36 “Child abuse and neglect services” means social services
37 which are directed toward:

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

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

42 (C) Preventing the unnecessary removal of children from
43 their families by identifying family problems and assisting
44 families in resolving problems which could lead to a removal of
45 children and a breakup of the family;

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

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

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

56 “Condition requiring emergency medical treatment” means
57 a condition which, if left untreated for a period of a few hours,

58 may result in permanent physical damage; that condition
59 includes, but is not limited to, profuse or arterial bleeding,
60 dislocation or fracture, unconsciousness and evidence of
61 ingestion of significant amounts of a poisonous substance.

62 “Imminent danger to the physical well-being of the child”
63 means an emergency situation in which the welfare or the life of
64 the child is threatened. These conditions may include an
65 emergency situation when there is reasonable cause to believe
66 that any child in the home is or has been sexually abused or
67 sexually exploited, or reasonable cause to believe that the
68 following conditions threaten the health, life, or safety of any
69 child in the home:

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

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

75 (C) Nutritional deprivation;

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

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

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

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

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

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

89 "Neglected child" means a child:

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

197 (B) Who is presently without necessary food, clothing,
198 shelter, medical care, education or supervision because of the
199 disappearance or absence of the child’s parent or custodian;

200 (C) “Neglected child” does not mean a child whose
201 education is conducted within the provisions of section one,
202 article eight, chapter eighteen of this code.

203 “Petitioner or co-petitioner” means the Department or any
204 reputable person who files a child abuse or neglect petition
205 pursuant to section six hundred one, article four, of this chapter.

206 “Permanency plan” means the part of the case plan which is
207 designed to achieve a permanent home for the child in the least
208 restrictive setting available.

209 “Respondent” means all parents, guardians, and custodians
210 identified in the child abuse and neglect petition who are not
211 petitioners or co-petitioners.

212 “Sexual abuse” means:

213 (A) Sexual intercourse, sexual intrusion, sexual contact, or
214 conduct proscribed by section three, article eight-c, chapter
215 sixty-one, which a parent, guardian or custodian engages in,
216 attempts to engage in, or knowingly procures another person to

117 engage in with a child notwithstanding the fact that for a child
118 who is less than sixteen years of age the child may have
119 willingly participated in that conduct or the child may have
120 suffered no apparent physical injury or mental or emotional
121 injury as a result of that conduct or, for a child sixteen years of
122 age or older the child may have consented to that conduct or the
123 child may have suffered no apparent physical injury or mental or
124 emotional injury as a result of that conduct; or

125 (B) Any conduct where a parent, guardian or custodian
126 displays his or her sex organs to a child, or procures another
127 person to display his or her sex organs to a child, for the purpose
128 of gratifying the sexual desire of the parent, guardian or
129 custodian, of the person making that display, or of the child, or
130 for the purpose of affronting or alarming the child.

131 “Sexual contact” means sexual contact as that term is
132 defined in section one, article eight-b, chapter sixty-one of this
133 code.

134 “Sexual exploitation” means an act where:

135 (A) A parent, custodian or guardian, whether for financial
136 gain or not, persuades, induces, entices or coerces a child to

137 engage in sexually explicit conduct as that term is defined in
138 section one, article eight-c, chapter sixty-one of this code; or

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

146 “Sexual intercourse” means sexual intercourse as that term
147 is defined in section one, article eight-b, chapter sixty-one of this
148 code.

149 “Sexual intrusion” means sexual intrusion as that term is
150 defined in section one, article eight-b, chapter sixty-one of this
151 code.

152 “Serious physical abuse” means bodily injury which creates
153 a substantial risk of death, which causes serious or prolonged
154 disfigurement, prolonged impairment of health or prolonged loss
155 or impairment of the function of any bodily organ.

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

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

7 “Adult” means a person who is at least eighteen years of age.

8 “Child” or “Juvenile” means any person under eighteen
9 years of age or is a transitioning adult. Once a child or juvenile
10 is transferred to a court with criminal jurisdiction pursuant to
11 section seven hundred ten, article four of this chapter, he or she
12 shall remain a child or juvenile for the purposes of the
13 applicability of this chapter. Unless otherwise stated, for the
14 purpose of child care services “child” means an individual who
15 meets one of the following conditions:

16 (A) Is under thirteen years of age;

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

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

24 “Juvenile delinquent” means a juvenile who has been
25 adjudicated as one who commits an act which would be a crime
26 under state law or a municipal ordinance if committed by an
27 adult.

28 “Status offender” means a juvenile who has been adjudicated
29 as one:

30 (A) Who habitually and continually refuses to respond to the
31 lawful supervision by his or her parents, guardian or legal
32 custodian such that the juvenile’s behavior substantially
33 endangers the health, safety or welfare of the juvenile or any
34 other person;

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

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

40 “Transitioning adult” means an individual with a transfer
41 plan to move to an adult setting who meets one of the following
42 conditions:

43 (A) Is eighteen years of age but under twenty-one years of
44 age, was in the custody of the Department of Health and Human
45 Resources upon reaching eighteen years of age and committed
46 an act of delinquency before reaching eighteen years of age,
47 remains under the jurisdiction of the juvenile court, and requires
48 supervision and care to complete an education and or treatment
49 program which was initiated prior to the eighteenth birthday; or

50 (B) Is eighteen years of age but under twenty-one years of
51 age, was adjudicated abused, neglected, or in the custody of the
52 Department of Health and Human Resources upon reaching
53 eighteen years of age and enters into a contract with the
54 Department of Health and Human Resources to continue in an
55 educational, training, or treatment program which was initiated
56 prior to the eighteenth birthday.

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

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

7 “Approval” means a finding by the Secretary of the
8 Department of Health and Human Resources that a facility
9 operated by the state has met the requirements of legislative
10 rules promulgated for operation of that facility and that a
11 Certificate of Approval or a Certificate of Operation has been
12 issued.

13 “Certification of Approval” or “Certificate of Operation”
14 means a statement issued by the Secretary of the Department of
15 Health and Human Resources that a facility meets all of the
16 necessary requirements for operation.

17 “Certificate of license” means a statement issued by the
18 Secretary of the Department of Health and Human Resources

19 authorizing an individual, corporation, partnership, voluntary
20 association, municipality or county, or any agency thereof, to
21 provide specified services for a limited period of time in
22 accordance with the terms of the certificate.

23 “Certificate of registration” means a statement issued by the
24 Secretary of the Department of Health and Human Resources to
25 a family child care home, informal family child care home or
26 relative family child care home, upon receipt of a
27 self-certification statement of compliance with the legislative
28 rules promulgated pursuant to this chapter.

29 “License” means the grant of official permission to a facility
30 to engage in an activity which would otherwise be prohibited.

31 “Registration” means the process by which a family child
32 care home, informal family child care home or a relative family
33 child care home self-certifies compliance with the legislative
34 rules promulgated pursuant to this chapter.

35 “Rule” means legislative rules promulgated by the Secretary
36 of the Department of Health and Human Resources or a
37 statement issued by the Secretary of the Department of Health

38 and Human Resources of the standards to be applied in the
39 various areas of child care.

40 “Variance” means a declaration that a rule may be
41 accomplished in a manner different from the manner set forth in
42 the rule.

43 “Waiver” means a declaration that a certain legislative rule
44 is inapplicable in a particular circumstance.

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

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

7 “Caregiver” means any person who is at least eighteen years
8 of age and:

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

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

13 “Custodian” means a person who has or shares actual
14 physical possession or care and custody of a child, regardless of
15 whether that person has been granted custody of the child by any
16 contract or agreement.

17 “Dysfunctional family,” for the purposes of part two, article
18 two of this chapter, means a parent or parents or an adult or
19 adults and a child or children living together and functioning in
20 an impaired or abnormal manner so as to cause substantial
21 physical or emotional danger, injury or harm to one or more
22 children thereof regardless of whether those children are natural
23 offspring, adopted children, step children or unrelated children
24 to that parents.

25 “Legal or minor guardianship” means the permanent
26 relationship between a child and a caretaker, established by order
27 of the court having jurisdiction over the child or juvenile,
28 pursuant to this chapter and chapter forty-four of this code.

29 “Parent” means an individual defined as a parent by law or
30 on the basis of a biological relationship, marriage to a person

31 with a biological relationship, legal adoption or other recognized
32 grounds.

33 “Parental rights” means any and all rights and duties
34 regarding a parent to a minor child.

35 “Parenting skills” means a parent’s competency in providing
36 physical care, protection, supervision and psychological support
37 appropriate to a child’s age and state of development.

38 “Siblings” means children who have at least one biological
39 parent in common or who have been legally adopted by the same
40 parent or parents.

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

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

6 “Developmental disability” means a severe, chronic
7 disability of a person which:

- 8 (A) Is attributable to a mental or physical impairment or a
9 combination of mental and physical impairments;
- 10 (B) Is manifested before the person attains age twenty-two;
- 11 (C) Results in substantial functional limitations in three or
12 more of the following areas of major life activity:
- 13 (i) Self-care;
- 14 (ii) Receptive and expressive language;
- 15 (iii) Learning;
- 16 (iv) Mobility;
- 17 (v) Self-direction;
- 18 (vi) Capacity for independent living; and
- 19 (vii) Economic self-sufficiency; and
- 20 (D) Reflects the person’s need for services and supports
21 which are of lifelong or extended duration and are individually
22 planned and coordinated.
- 23 (E) The term “developmental disability”, when applied to
24 infants and young children, means individuals from birth to age
25 five, inclusive, who have substantial developmental delays or
26 specific congenital or acquired conditions with a high probability

27 of resulting in developmental disabilities if services are not
28 provided.

29 “Family or primary caregiver,” for the purposes of part six,
30 article two of this chapter, means the person or persons with
31 whom the developmentally disabled person resides and who is
32 primarily responsible for the physical care, education, health and
33 nurturing of the disabled person pursuant to the provisions of
34 part six, article two of this chapter. The term does not include
35 hospitals, nursing homes, personal care homes or any other
36 similar institution.

37 “Legal guardian,” for the purposes of part six of article two
38 of this chapter, means the person who is appointed legal
39 guardian of a developmentally disabled person and who is
40 responsible for the physical and financial aspects of caring for
41 that person, regardless of whether the disabled person resides
42 with his or her legal guardian or another family member.

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

1 When used in this chapter, terms defined in this section have
2 the meanings ascribed to them that relate to, but are not limited

3 to, child advocacy, care, residential and treatment programs,
4 except in those instances where a different meaning is provided
5 or the context in which the word is used clearly indicates that a
6 different meaning is intended.

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

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

19 “Child care center” means a facility maintained by the state
20 or any county or municipality thereof, or any agency or facility
21 maintained by an individual, firm, corporation, association or
22 organization, public or private for the care of thirteen or more

23 children for child care services in any setting, if the facility is
24 open for more than thirty days per year per child.

25 “Child care services” means direct care and protection of
26 children during a portion of a twenty-four hour day outside of
27 the child’s own home which provides experiences to children
28 that foster their healthy development and education.

29 “Child placing agency” means a child welfare agency
30 organized for the purpose of placing children in private family
31 homes for foster care or for adoption. The function of a
32 child-placing agency may include the investigation and
33 certification of foster family homes and foster family group
34 homes as provided in this chapter. The function of a child
35 placing agency may also include the supervision of children who
36 are sixteen or seventeen years old and living in unlicensed
37 residences.

38 “Child welfare agency” means any agency or facility
39 maintained by the state or any county or municipality thereof, or
40 any agency or facility maintained by an individual, firm,
41 corporation, association or organization, public or private, to
42 receive children for care and maintenance or for placement in

43 residential care facilities, including, without limitation, private
44 homes, or any facility that provides care for unmarried mothers
45 and their children. A child welfare agency does not include
46 juvenile detention facilities or juvenile correctional facilities
47 operated by or under contract with the Division of Juvenile
48 Services, pursuant to part nine, article two of this chapter, nor
49 any other facility operated by that division for the secure housing
50 or holding of juveniles committed to its custody.

51 “Community based” means a facility, program or service
52 located near the child’s home or family and involving
53 community participation in planning, operation and evaluation
54 and which may include, but is not limited to, medical,
55 educational, vocational, social and psychological guidance,
56 training, special education, counseling, alcoholism and any
57 treatment and other rehabilitation services.

58 “Facility” means a place or residence, including personnel,
59 structures, grounds and equipment, used for the care of a child
60 or children on a residential or other basis for any number of
61 hours a day in any shelter or structure maintained for that
62 purpose. Facility does not include any juvenile detention facility

63 or juvenile correctional facility operated by or under contract
64 with the Division of Juvenile Services, for the secure housing or
65 holding of juveniles committed to its custody.

66 “Family child care facility” means any facility which is used
67 to provide nonresidential child care services for compensation
68 for seven to twelve children, including children who are living
69 in the household, who are under six years of age. No more than
70 four of the total number of children may be under twenty-four
71 months of age. A facility may be in a provider’s residence or a
72 separate building.

73 “Family child care home” means a facility which is used to
74 provide nonresidential child care services for compensation in a
75 provider’s residence. The provider may care for four to six
76 children, at one time including children who are living in the
77 household, who are under six years of age. No more than two of
78 the total number of children may be under twenty-four months
79 of age.

80 “Family resource network” means:

81 (A) A local community organization charged with service
82 coordination, needs and resource assessment, planning,

83 community mobilization and evaluation, and which has met the
84 following criteria:

85 (i) Agreeing to a single governing entity;

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

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

90 (iv) Having nonproviders, which include family
91 representatives and other members who are not employees of
92 publicly funded agencies, as the majority of the members of the
93 governing body, and having family representatives as the
94 majority of the nonproviders;

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

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

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

105 “Family support,” for the purposes of part six, article two of
106 this chapter, means goods and services needed by families to
107 care for their family members with developmental disabilities
108 and to enjoy a quality of life comparable to other community
109 members.

110 “Family support program” means a coordinated system of
111 family support services administered by the Department of
112 Health and Human Resources through contracts with behavioral
113 health agencies throughout the state.

114 “Foster family home” means a private residence which is
115 used for the care on a residential basis of no more than five
116 children who are unrelated by blood, marriage or adoption to any
117 adult member of the household.

118 “Health care and treatment” means:

119 (A) Developmental screening;

120 (B) Mental health screening;

121 (C) Mental health treatment;

122 (D) Ordinary and necessary medical and dental examination
123 and treatment;

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

126 (F) Nonemergency diagnosis and treatment. However,
127 nonemergency diagnosis and treatment does not include an
128 abortion.

129 “Home-based family preservation services” means services
130 dispensed by the Department of Human Services or by another
131 person, association or group who has contracted with that
132 division to dispense services when those services are intended to
133 stabilize and maintain the natural or surrogate family in order to
134 prevent the placement of children in substitute care. There are
135 two types of home-based family preservation services and they
136 are as follows:

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

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

141 “Informal family child care” means a home that is used to
142 provide nonresidential child care services for compensation for
143 three or fewer children, including children who are living in the
144 household, who are under six years of age. Care is given in the
145 provider’s own home to at least one child who is not related to
146 the caregiver.

147 “Nonsecure facility” means any public or private residential
148 facility not characterized by construction fixtures designed to
149 physically restrict the movements and activities of individuals
150 held in lawful custody in that facility and which provides its
151 residents access to the surrounding community with supervision.

152 “Out of school time” means a child care service which offers
153 activities to children before and after school, on school holidays,
154 when school is closed due to emergencies, and on school
155 calendar days set aside for teacher activities.

156 “Placement” means any temporary or permanent placement
157 of a child who is in the custody of the state in any foster home,
158 group home or other facility or residence.

159 “Pre-adjudicatory community supervision” means
160 supervision provided to a youth prior to adjudication, a period of

161 supervision up to one year for an alleged status or delinquency
162 offense.

163 “Regional family support council” means the council
164 established by the regional family support agency to carry out
165 the responsibilities specified in part six, article two of this
166 chapter.

167 “Relative family child care” means a home that provides
168 nonresidential child care services only to children related to the
169 caregiver. The caregiver is a grandparent, great grandparent,
170 aunt, uncle, great-aunt, great-uncle or adult sibling of the child
171 or children receiving care. Care is given in the provider’s home.

172 “Residential services” means child care which includes the
173 provision of nighttime shelter and the personal discipline and
174 supervision of a child by guardians, custodians or other persons
175 or entities on a continuing or temporary basis. It may include
176 care and or treatment for transitioning adults. Residential
177 Services does not include or apply to any juvenile detention
178 facility or juvenile correctional facility operated by the Division
179 of Juvenile Services, created pursuant to this chapter, for the
180 secure housing or holding of juveniles committed to its custody.

181 “Secure facility” means any public or private residential
182 facility which includes construction fixtures designed to
183 physically restrict the movements and activities of children or
184 other individuals held in lawful custody in that facility.

185 “Staff-secure facility” means any public or private
186 residential facility characterized by staff restrictions of the
187 movements and activities of individuals held in lawful custody
188 in that facility and which limits its residents’ access to the
189 surrounding community, but is not characterized by construction
190 fixtures designed to physically restrict the movements and
191 activities of residents.

192 “State family support council” means the council established
193 by the Department of Health and Human Resources pursuant to
194 part six, article two of this chapter to carry out the
195 responsibilities specified in article two of this chapter.

196 “Time-limited reunification services” means individual,
197 group and family counseling, inpatient, residential or outpatient
198 substance abuse treatment services, mental health services,
199 assistance to address domestic violence, services designed to
200 provide temporary child care and therapeutic services for

201 families, including crisis nurseries and transportation to or from
202 those services, provided during fifteen of the most recent
203 twenty-two months a child or juvenile has been in foster care, as
204 determined by the earlier date of the first judicial finding that the
205 child is subjected to abuse or neglect, or the date which is sixty
206 days after the child or juvenile is removed from home.

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

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

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

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

14 “Extrajudicial Statement” means any utterance, written or
15 oral, which was made outside of court.

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

26 “Community team” means a multidisciplinary group which
27 addresses the general problem of child abuse and neglect in a
28 given community and may consist of several multidisciplinary
29 teams with different functions.

30 “Res gestae” means a spontaneous declaration made by a
31 person immediately after an event and before the person has had
32 an opportunity to conjure a falsehood.

33 “Valid court order” means an order issued by a court of
34 competent jurisdiction relating to a child brought before the
35 court and who is the subject of that order. Prior to the entry of
36 the order the child shall have received the full due process rights
37 guaranteed to that child or juvenile by the Constitutions of the
38 United States and the State of West Virginia.

39 “Violation of a traffic law of West Virginia” means a
40 violation of chapter seventeen-a, seventeen-b, seventeen-c or
41 seventeen-d of this code except a violation of section one or two,
42 article four, chapter seventeen-c of this code relating to hit and
43 run or section one, two or three, article five of that chapter,
44 relating, respectively, to negligent homicide, driving under the
45 influence of alcohol, controlled substances or drugs and reckless
46 driving.

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

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

6 “Department” or “state department” means the West
7 Virginia Department of Health and Human Resources.

8 “Division of Juvenile Services” means the division within
9 the West Virginia Department of Military Affairs and Public
10 Safety.

11 “Law-enforcement officer” means a law-enforcement officer
12 of the Department of Public Safety, a municipality or county
13 sheriff’s department.

14 “Secretary” means the Secretary of the West Virginia
15 Department of Health and Human Resources.

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

1 As used in article six of this chapter:

2 “Child” means an individual under the age of eighteen years
3 who is not emancipated;

4 “Clearinghouse” means the West Virginia missing children
5 information clearinghouse;

6 “Custodian” means a parent, guardian, custodian or other
7 person who exercises legal physical control, care or custody of
8 a child;

9 “Missing child” means a child whose whereabouts are
10 unknown to the child’s custodian and the circumstances of
11 whose absence indicate that:

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

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

18 “Missing child report” means information that is:

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

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

25 “Possible match” means the similarities between an
26 unidentified body of a child and a missing child that would lead
27 one to believe they are the same child;

28 “Reporter” means the person who reports a missing child;

29 and

30 “State agency” means an agency of the state, political

31 subdivision of the state or public post-secondary educational

32 institution.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN

PART I. GENERAL AUTHORITY AND DUTIES OF

THE DEPARTMENT OF HEALTH AND HUMAN RESOURCES.

§49-2-101. Authorization and responsibility.

1 (a) The Department of Health and Human Resources is
2 authorized to provide care, support and protective services for
3 children who are handicapped by dependency, neglect, single
4 parent status, mental or physical disability, or who for other
5 reasons are in need of public service. The department is also
6 authorized to accept children for care from their parent or
7 parents, guardian, custodian or relatives and to accept the
8 custody of children committed to its care by courts. The
9 Department of Health and Human Resources or any county
10 office of the department is also authorized and to accept

11 temporary custody of children for care from any law-
12 enforcement officer in an emergency situation.

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

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

1 For the sole purpose of increasing the number of full time
2 front line child protective service case workers and investigators,
3 the Secretary of the Department of Health and Human Resources

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

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

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

§49-2-104. Education of the public.

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

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

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

14 secretary from obtaining injunctive relief pursuant to section one
15 hundred twenty, article two of this chapter.

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

1 It is the responsibility of the Department of Health and
2 Human Resources to provide care for neglected children who are
3 committed to its care for custody or guardianship. The
4 department may provide this care for children in family homes
5 meeting required standards of certification established and
6 enforced by the Department of Health and Human Resources.

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

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

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

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

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

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

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

§49-2-109. Placing children from other states in private homes of state.

1 An institution or organization incorporated under the laws of
2 another state shall not place a child in a private home in the state
3 without the approval of the department, and the agency so
4 placing the child shall arrange for supervision of the child
5 through its own staff or through a licensed child welfare agency
6 in this state, and shall maintain responsibility for the child until
7 he or she is adopted or discharged from care with the approval
8 of the department.

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

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

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

- 1 (a) In order to improve standards of child care, the
2 department shall cooperate with the governing boards of child
3 welfare agencies, assist the staffs of those agencies through
4 advice on progressive methods and procedures of child care and
5 improvement of the service rendered, and assist in the
6 development of community plans of child care. The department,
7 or its duly authorized agent, may visit any child welfare agency
8 to advise the agency on matters affecting the health of children
9 and to inspect the sanitation of the buildings used for their care.
- 10 (b) Each child welfare agency shall keep records of each
11 child under its control and care as the department may prescribe,
12 and shall report to the department, whenever requested, facts as
13 may be required with reference to the children, upon forms
14 furnished by the department. All records regarding children and
15 all facts learned about children and their parents or relatives shall
16 be regarded as confidential and shall be properly safeguarded by
17 the agency and the department.

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

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

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

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

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

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

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

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

17 (e) This section does not apply to:

18 (1) A kindergarten, preschool or school education program
19 which is operated by a public school or which is accredited by
20 the state Department of Education, or any other kindergarten,
21 preschool or school programs which operate with sessions not
22 exceeding four hours per day for any child;

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

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

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

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

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

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

43 (8) Any out-of-school time program serving children six
44 years of age or older and meets all of the following
45 requirements, or is an out-of-school time program that is
46 affiliated and in good standing with a national Congressionally
47 chartered organization and meets all of the following
48 requirements:

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

51 (B) The program performs background checks on all
52 volunteers and staff;

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

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

57 (f) The secretary is authorized to issue an emergency rule
58 relating to conducting a survey of existing facilities in this state
59 in which children reside on a temporary basis in order to
60 ascertain whether they should be subject to licensing under this
61 article or applicable licensing provisions relating to behavioral
62 health treatment providers.

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

66 (h) All facilities or programs that provide out-of-school time
67 care shall register with the department upon commencement of
68 operations and on an annual basis thereafter. The department
69 shall obtain information, such as the name of the facility or
70 program, the description of the services provided and any other
71 information relevant to the determination by the department as
72 to whether the facility or program meets the criteria for
73 exemption under this section.

74 (i) Any child care service that is licensed or receives a
75 certificate of registration shall have a written plan for evacuation
76 in the event of fire, natural disaster or other threatening situation

77 that may pose a health or safety hazard to the children in the
78 child care service.

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

80 (A) A designated relocation site and evacuation;

81 (B) Procedures for notifying parents of the relocation and
82 ensuring family reunification;

83 (C) Procedures to address the needs of individual children
84 including children with special needs;

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

87 (E) Coordination with local emergency management
88 officials; and

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

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

92 December 31, of each year. If a child care service fails to update

93 the plan, no action shall be taken against the child care service's

94 license or registration until notice is provided and the child care

95 service is given thirty days after the receipt of notice to provide

96 an updated plan.

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

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

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

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

7 (b) The secretary shall prescribe by legislative rule forms
8 and reasonable application procedures including, but not limited
9 to, fingerprinting of applicants and other persons responsible for

10 the care of children for submission to the State Police and, if
11 necessary, to the Federal Bureau of Investigation for criminal
12 history record checks.

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

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

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

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

31 (3) Discipline;

32 (4) Fire and environmental safety;

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

34 (6) Health, sanitation and nutrition.

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

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

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

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

5 The license or approval shall be reinstated upon application to
6 the secretary and a determination of compliance.

7 (b) An initial six-month license or approval shall be issued
8 to an applicant establishing a new service found to be in

9 compliance on initial review with regard to policy, procedure,
10 organization, risk management, human resources, service
11 environment and record keeping regulations.

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

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

24 (e) A certificate of registration is effective for a period up to
25 two years from the date of issuance, unless revoked based on
26 evidence of a failure to comply with this article or any rules
27 promulgated pursuant to this article. The certificate of
28 registration shall be reinstated upon application to the secretary,

29 including a statement of assurance of continued compliance with
30 the legislative rules promulgated pursuant to this article.

31 (f) The license, approval or registration issued under this
32 article is not transferable and applies only to the facility and its
33 location stated in the application. The license, registration or
34 approval shall be publicly displayed. The foster and adoptive
35 family homes, informal family child care homes and relative
36 family child care homes shall be required to display registration
37 certificates of registration or approval upon request rather than
38 by posting.

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

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

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

45 (2) Prohibit intake of any children; or

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

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

1 (a) The secretary shall enforce this article.

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

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

11 (d) The secretary shall have access to the premises,
12 personnel, children in care and records of each facility subject to
13 inspection, including at a minimum, case records, corporate and
14 financial records and board minutes. Applicants for licenses,
15 approvals, and certificates of registration shall consent to
16 reasonable on-site administrative inspections, made with or
17 without prior notice, as a condition of licensing, approval, or
18 registration.

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

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

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

1 (a) The secretary may revoke or make provisional the
2 licensure registration of any home facility or child welfare
3 agency regulated pursuant to this chapter if a facility materially
4 violates this article, or any terms or conditions of the license,
5 registration or approval issued, or fails to maintain established

6 requirements of child care. This section does not apply to family
7 child care homes.

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

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

1 When the secretary finds that the operation of a facility
2 constitutes an immediate danger of serious harm to children
3 served by the facility, the secretary shall issue an order of
4 closure terminating operation of the facility. When necessary,
5 the secretary shall place or direct the placement of the children
6 in a residential facility which has been closed into appropriate
7 facilities. A facility closed by the secretary may not operate
8 pending administrative or judicial review without court order.

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

1 (a) The secretary shall provide supervision to ascertain
2 compliance with the rules promulgated pursuant to this chapter

3 through regular monitoring, visits to facilities, documentation,
4 evaluation and reporting. The secretary is responsible for
5 training and education, within fiscal limitations, specifically for
6 the improvement of care in family child care homes and
7 facilities. The secretary shall consult with applicants, the
8 personnel of child welfare agencies, and children under care to
9 assure the highest quality child care possible.

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

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

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

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

9 (c) Where a violation of this article or a legislative rule
10 promulgated by the secretary may result in serious harm to
11 children under care, the secretary may seek injunctive relief
12 against any person, corporation, child welfare agency, child
13 placing agency, child care center, family child care facility,
14 family child care home or governmental official through
15 proceedings instituted by the Attorney General, or the
16 appropriate county prosecuting attorney, in the Circuit Court of
17 Kanawha County or in the circuit court of any county where the
18 children are residing or may be found.

§49-2-121. Rule-making.

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

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

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

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

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

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

1 **(a) The secretary shall submit on or before January 1, of**
2 **each year a report to the Governor and the Legislative Oversight**
3 **Commission on Health and Human Resources Accountability,**
4 **concerning the regulation of child welfare agencies, child**

5 placing agencies, child care centers, family child care facilities,
6 family child care homes, informal family child care homes,
7 relative family child care homes and child care facilities during
8 the year. The report shall include at a minimum, data on the
9 number of children and staff at each facility (except family child
10 care, informal family child care homes and relative family child
11 care), applications received, types of licenses, approvals and
12 registrations granted, denied, made provisional or revoked and
13 any injunctions obtained or facility closures ordered.

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

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

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

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

7 (b) A summary review of proposed health care facilities or
8 health care services for children who are placed out of their
9 home, or who are at imminent risk of being placed out of their
10 home, is initiated when the proposal is recommended to the
11 health care cost review authority by the Secretary of the
12 Department of Health and Human Resources and the secretary
13 has made the following findings:

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

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

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

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

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

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

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

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

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

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

1 (a) The Legislature finds that the state's current system of
2 servicing children and families in need of or at risk of needing
3 social, emotional and behavioral health services is fragmented.
4 The existing categorical structure of government programs and
5 their funding streams discourages collaboration, resulting in
6 duplication of efforts and a waste of limited resources. Children
7 are usually involved in multiple child-serving systems, including
8 child welfare, juvenile justice and special education. More than
9 ten percent of children presently in care are presently in

10 out-of-state placements. Earlier efforts at reform have focused
11 on quick fixes for individual components of the system at the
12 expense of the whole. It is the purpose of this section to establish
13 a mechanism to achieve systemic reform by which all of the
14 state's child-serving agencies involved in the residential
15 placement of at-risk youth jointly and continually study and
16 improve upon this system and make recommendations to their
17 respective agencies and to the Legislature regarding funding and
18 statutory, regulatory and policy changes. It is further the
19 Legislature's intent to build upon these recommendations to
20 establish an integrated system of care for at-risk youth and
21 families that makes prudent and cost-effective use of limited
22 state resources by drawing upon the experience of successful
23 models and best practices in this and other jurisdictions, which
24 focuses on delivering services in the least restrictive setting
25 appropriate to the needs of the child, and which produces better
26 outcomes for children, families and the state.

27 (b) There is created within the Department of Health and
28 Human Resources the Commission to Study the Residential
29 Placement of Children. The commission consists of the Secretary

30 of the Department of Health and Human Resources, the
31 Commissioner of the Bureau for Children and Families, the
32 Commissioner for the Bureau for Behavioral Health and Health
33 Facilities, the Commissioner for the Bureau for Medical
34 Services, the State Superintendent of Schools, a representative
35 of local educational agencies, the Director of the Office of
36 Institutional Educational Programs, the Director of the Office of
37 Special Education Programs and Assurance, the Director of the
38 Division of Juvenile Services and the Executive Director of the
39 Prosecuting Attorney's Institute. At the discretion of the West
40 Virginia Supreme Court of Appeals, circuit and family court
41 judges and other court personnel, including the Administrator of
42 the Supreme Court of Appeals and the Director of the Juvenile
43 Probation Services Division, may serve on the commission.
44 These statutory members may further designate additional
45 persons in their respective offices who may attend the meetings
46 of the commission if they are the administrative head of the
47 office or division whose functions necessitate their inclusion in
48 this process. In its deliberations, the commission shall also
49 consult and solicit input from families and service providers.

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

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

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

57 (2) The adequacy, capacity, availability and utilization of
58 existing in-state facilities to serve the needs of children requiring
59 residential placements;

60 (3) Strategies and methods to reduce the number of children
61 who must be placed in out-of-state facilities and to return
62 children from existing out-of-state placements, initially targeting
63 older youth who have been adjudicated delinquent;

64 (4) Staffing, facilitation and oversight of multidisciplinary
65 treatment planning teams;

66 (5) The availability of and investment in community-based,
67 less restrictive and less costly alternatives to residential
68 placements;

69 (6) Ways in which up-to-date information about in-state
70 placement availability may be made readily accessible to state
71 agency and court personnel, including an interactive secure web
72 site;

73 (7) Strategies and methods to promote and sustain
74 cooperation and collaboration between the courts, state and local
75 agencies, families and service providers, including the use of
76 inter-agency memoranda of understanding, pooled funding
77 arrangements and sharing of information and staff resources;

78 (8) The advisability of including “no-refusal” clauses in
79 contracts with in-state providers for placement of children whose
80 treatment needs match the level of licensure held by the
81 provider;

82 (9) Identification of in-state service gaps and the feasibility
83 of developing services to fill those gaps, including funding;

84 (10) Identification of fiscal, statutory and regulatory barriers
85 to developing needed services in-state in a timely and responsive
86 way;

87 (11) Ways to promote and protect the rights and
88 participation of parents, foster parents and children involved in
89 out-of-home care;

90 (12) Ways to certify out-of-state providers to ensure that
91 children who must be placed out-of-state receive high quality
92 services consistent with this state’s standards of licensure and
93 rules of operation; and

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

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

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

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

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

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

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

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

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

PART II. HOME-BASED FAMILY PRESERVATION ACT

§49-2-201. Findings and purpose.

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

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

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

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

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

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

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

1 For purposes of this article, no contractor employee of the
2 department may exceed three families during any period of time
3 when that contractor employee is engaged in providing intensive,
4 short term home-based family preservation intervention. In
5 addition, no caseload may exceed six families during any period
6 of time when home-based aftercare is provided pursuant to this
7 article. When providing either type of home-based family
8 preservation services to any family, the department or contractor
9 shall provide trained personnel who shall be available during
10 nonworking hours to assist families on an emergency basis.

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

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

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

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

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

1 The costs of providing special services to families receiving
2 regular services in accordance with this article are allowable to
3 the extent those goods and services are justified pursuant to

4 carrying out the purposes of this article. Those special services
5 may include, but are not limited to, homemaker assistance, food,
6 clothing, educational materials, respite care and recreational or
7 social activities.

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

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

PART III. QUALITY IMPROVEMENT AND
RATING SYSTEM FOR CHILD CARE.

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

1 (a) The Legislature finds that:

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

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

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

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

18 (c) The Secretary of the Department of Health and Human
19 Resources shall create a Quality Rating and Improvement
20 System Advisory Council to provide advice on the development
21 of the rule and plan for the phased implementation of a child

22 care program quality rating and improvement system and the
23 ongoing program review and policies for quality improvement.
24 The secretary shall facilitate meetings of the advisory council.
25 The advisory council shall include representatives from the
26 provider community, advocacy groups, the Legislature,
27 providers of professional development services for the early
28 childhood community, regulatory agencies and others who may
29 be impacted by the creation of a quality rating and improvement
30 system.

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

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

1 (a) The Secretary of the Department of Health and Human
2 Resources shall propose rules for legislative approval in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code to implement a quality rating and
5 improvement system. The quality rating and improvement
6 system shall be applicable to licensed child care centers and
7 facilities and registered family child care homes. If other types

8 of child care settings, such as school-age child care programs
9 become licensed after the implementation of a statewide quality
10 rating and improvement system, the secretary may develop
11 quality criteria and incentives that will allow the other types of
12 child care settings to participate in the quality rating and
13 improvement system. The rules shall include, but are not limited
14 to, the following:

15 (1) A four-star rating system for registered family child care
16 homes and a four-star rating system for all licensed programs,
17 including family child care facilities and child care centers, to
18 easily communicate to consumers four progressively higher
19 levels of quality child care. One star indicating meeting the
20 minimum acceptable standard and four stars indicating meeting
21 or exceeding the highest standard. The system shall reflect the
22 cumulative attainment of the standards at each level and all
23 lesser levels. However, any program accredited by the National
24 Association for the Education of Young Children or the National
25 Association for Family Child Care, as applicable, shall
26 automatically be awarded four-star status;

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

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

41 (A) Evaluations conducted by trained evaluators with
42 appropriate early childhood education and training on the
43 selected assessment tool and with a demonstrated inter-rater
44 reliability of eighty-five percent or higher. The evaluations shall
45 include an on-site inspection conducted at least annually to
46 determine whether programs are rated correctly and continue to

47 meet the appropriate standards. The evaluations and observations
48 shall be conducted on at least a statistically valid percentage of
49 center classrooms, with a minimum of one class per age group;

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

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

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

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

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

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

1 Attached to the proposed rules required in section three
2 hundred two of this article, the Secretary of the Department of
3 Health and Human Resources shall submit a financial plan to
4 support the implementation of a statewide quality rating and
5 improvement system and help promote quality improvement.

6 The financial plan shall be considered a part of the rule and shall
7 include specific proposals for implementation of the provisions
8 of this section as determined by the secretary. The plan shall
9 address, but is not limited to, the following:

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

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

15 (B) Technical assistance staff responsible for career
16 advising, accreditation support services, improvement planning,
17 portfolio development and evaluations for improvement

18 planning only. The goal for technical assistance staffing is to
19 ensure that individualized technical assistance is available to
20 participating programs;

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

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

31 (E) At least one additional training specialist at each of the
32 child care resource and referral agencies to support new training
33 topics and to provide training for school-age child care
34 programs. Training providers, such as the child care resource and
35 referral agencies shall purchase new training programs on topics,
36 such as business management, the Devereux Resiliency Training
37 and Mind in the Making; and

38 (F) Additional staff necessary for program administration;

39 (2) Implementation of a broad public awareness campaign

40 and communication strategies that may include the following:

41 (A) Brochures, internet sites, posters, banners, certificates,

42 decals and pins to educate parents; and

43 (B) Strategies, such as earned media campaigns, paid

44 advertising campaigns, e-mail and internet-based outreach,

45 face-to-face communication with key civic groups and grassroots

46 organizing techniques; and

47 (3) Implementation of an internet-based management

48 information system that meets the following requirements:

49 (A) The system shall allow for multiple agencies to access

50 and input data;

51 (B) The system shall provide the data necessary to determine

52 if the quality enhancements result in improved care and better

53 outcomes for children;

54 (C) The system shall allow access by Department of Health

55 and Human Resources subsidy and licensing staff, child care

56 resource and referral agencies, the agencies that provide training

57 and scholarships, evaluators and the child care programs;

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

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

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

66 (4) Financial assistance for child care programs needed to
67 improve learning environments, attain high ratings and sustain
68 long-term quality without passing additional costs on to families
69 that may include, but are not limited to:

70 (A) Assistance to programs in assessment and individual
71 program improvement planning and providing the necessary
72 information, coaching and resources to assist programs to
73 increase their level of quality;

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

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

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

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

85 (i) An incentive grant shall be awarded based on the type of
86 child care program and the level at which the child care program
87 is rated with the types of child care programs having more
88 children and child care programs rated at higher tiers being
89 awarded a larger grant than the types of child care programs
90 having less children and child care programs rated at lower tiers;
91 and

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

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

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

200 (i) The cost of salary supplements shall be phased in over a
201 five-year period;

202 (ii) The Secretary of the Department of Health and Human
203 Resources shall establish a salary scale for each of the top three
204 rating tiers that varies the salary support based on the education
205 of the care giver and the rating tier of the program; and

206 (iii) Any center with at least a tier two rating that employs at
207 least one staff person participating in the scholarship program
208 required pursuant to paragraph (B) of this subdivision or
209 employs degree staff may apply to the Secretary of the
210 Department of Health and Human Resources for funding to
211 provide health care benefits based on the Teacher Education and
212 Compensation Helps model in which insurance costs are shared
213 among the employees, the employer and the state; and

214 (B) The provision of scholarships and establishment of
215 professional development plans for center staff that would

116 promote increasing the credentials of center staff over a
117 five-year period; and

118 (6) Financial assistance to the child care consumers whose
119 income is at two hundred percent of the federal poverty level or
120 under to help them afford the increased market price of child
121 care resulting from increased quality.

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

1 The secretary shall report annually to the Legislature on the
2 progress on development and implementation of a child care
3 quality rating and improvement system and its impact on
4 improving the quality of child care in the state. The secretary
5 may propose amendments to the rules and financial plan
6 necessary to promote implementation of the quality rating and
7 improvement system and improve the quality of child care and
8 may recommend needed legislation. Nothing in this article
9 requires the implementation of a quality rating and improvement
10 system unless funds are appropriated therefore. The secretary
11 may prioritize the components of the financial plan for

12 implementation and quality improvement for funding purposes.
13 If insufficient funds are appropriated for full implementation of
14 the quality rating and improvement system, the rules shall
15 provide for gradual implementation over a period of several
16 years.

PART IV. CHILDREN'S TRUST FUND.

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

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

12 Secretary of the Department of Health and Human Resources or
13 his or her designee.

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

23 (c) All interest accruing from investment of moneys in the
24 Children's Trust Fund shall be credited to the fund. The
25 Legislative Auditor shall conduct an audit of the fund at least
26 every five fiscal years.

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

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

40 (f) All orders, determinations, rules, permits, grants,
41 contracts, certificates, licenses, waivers, bonds, authorizations
42 and privileges which have been issued, made, granted or allowed
43 to become effective by the Governor, by any state department or
44 agency or official thereof, or by a court of competent
45 jurisdiction, in the performance of functions which have been
46 transferred to the Bureau for Children and Families within the
47 Department of Health and Human Resources, and were in effect
48 on the date the transfer occurred continue in effect, for the
49 benefit of the department, according to their terms until
50 modified, terminated, superseded, set aside or revoked in

51 accordance with the law by the Governor, the Secretary of the
52 Department of Health and Human Resources or other authorized
53 official, a court of competent jurisdiction or by operation of law.

PART V. CHILDREN WITH SPECIAL NEEDS.

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

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

§49-2-502. Powers of the secretary.

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

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

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

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

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

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

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

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

- 1 So far as practicable, the services and facilities of the State
- 2 Department of Education, The Division of Vocational
- 3 Rehabilitation Services and Division of Corrections or their
- 4 successor organizations shall be available to the Department of
- 5 Health and Human Resources for the purposes of this article.

§49-2-505. Cost of treatment.

- 1 All payments from any corporation, association, program or
- 2 fund providing insurance coverage or other payment for
- 3 medicine, medical, surgical and hospital treatment, crutches,

4 artificial limbs and those other and additional approved
5 mechanical appliances and devices as may be reasonably
6 required for a child with special health care needs, shall be
7 applied toward the total cost of treatment.

PART VI. WEST VIRGINIA FAMILY SUPPORT PROGRAM.

§49-2-601. Findings; intent.

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

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

11 (1) The quality of life of children with developmental
12 disabilities, their families and communities is enhanced by
13 caring for the children within their own homes. Children with
14 disabilities benefit by growing up in their own families, families

15 benefit by staying together and communities benefit from the
16 inclusion of people with diverse abilities.

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

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

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

31 (c) The Legislature finds that there are at least ten thousand
32 West Virginians with developmental disabilities who live with
33 and are supported by their families, and that the state's policy is

34 to prevent the institutionalization of people with developmental
35 disabilities.

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

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

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

1 (a) The regional family support agency, designated under
2 article two of this chapter, shall direct and be responsible for the
3 individual assessment of each developmentally disabled person
4 which it has designated and shall prepare a service plan with the
5 developmentally disabled person's family. The needs and
6 preferences of the family will be the basis for determining what
7 goods and services will be made available within the resources
8 available.

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

14 (1) Respite care;

15 (2) Personal and attendant care;

16 (3) Child care;

17 (4) Architectural and vehicular modifications;

18 (5) Health-related costs not otherwise covered;

19 (6) Equipment and supplies;

20 (7) Specialized nutrition and clothing;

21 (8) Homemaker services;

22 (9) Transportation;

23 (10) Utility costs;

24 (11) Integrated community activities; and

25 (12) Training and technical assistance.

26 (c) As part of the family support program, the regional
27 family support agency, designated under section six hundred two
28 of this article, shall provide case management for each family to

29 provide information, service coordination and other assistance as
30 needed by the family.

31 (d) The family support program shall assist families of
32 developmentally disabled adults in planning and obtaining
33 community living arrangements, employment services and other
34 resources needed to achieve, to the greatest extent possible,
35 independence, productivity and integration of the
36 developmentally disabled adult into the community.

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

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

46 (g) Funds, goods or services provided to eligible families by
47 the family support program under this article shall not be
48 considered as income to those families for any purpose under

49 this code or under the rules and regulations of any agency of
50 state government.

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

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

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

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

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

3 (b) The Department of Health and Human Resources shall
4 initially implement the family support program through contracts
5 with an agency within four of the state's behavioral health

6 regions, with the four regions to be determined by the
7 Department of Health and Human Resources in consultation with
8 the state family support council. These regional family support
9 agencies of the family support program will be responsible for
10 implementing this article and subsequent policies for the families
11 of persons with developmental disabilities residing within their
12 respective regions.

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

16 (1) Development of annual budgets;

17 (2) Program specifications;

18 (3) Criteria for awarding contracts for operation of regional
19 family support programs and the role of regional family support
20 councils;

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

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

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

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

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

32 (d) The Department of Health and Human Resources shall
33 submit a report to the Governor and the Legislature on the family
34 support program by September 15, of every year so long as the
35 program is funded.

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

1 (a) Each regional family support agency shall establish a
2 regional family support council comprised of at least seven
3 members, of whom at least a majority shall be persons with
4 developmental disabilities or their parents or primary caregivers.

5 Each regional family support council shall meet at least quarterly
6 to advise the regional family support agency on matters related
7 to local implementation of the family support program and to

8 communicate information and recommendations regarding the
9 family support program to the State Family Support Council.

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

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

27 (d) Members of the state and regional councils who are a
28 member of the family or the primary caregiver of a
29 developmentally disabled person shall be reimbursed for travel
30 and lodging expenses incurred in attending official meetings of
31 their councils. Child care expenses related to the
32 developmentally disabled person shall also be reimbursed.
33 Members of regional councils who are eligible for expense
34 reimbursement shall be reimbursed by their respective regional
35 family support agencies.

PART VII. CAREGIVERS CONSENT ACT.

§49-2-701. Caregiver consent for minor's health care; treatment.

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

7 (b) Examination and treatment shall be prescribed by or
8 under the supervision of a physician, advanced practice nurse,

9 dentist or mental health professional licensed to practice in the
10 state.

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

1 The decision of a caregiver who possesses and presents a
2 notarized affidavit of caregiver consent for a minor's health care
3 pursuant to section seven hundred three of this article shall be
4 honored by a health care facility or practitioner unless the health
5 care facility or practitioner has actual knowledge that a parent,
6 legal custodian or guardian of a minor has made a contravening
7 decision to consent to or to refuse medical treatment for the
8 minor.

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

1 An affidavit of caregiver consent for a minor's health care
2 shall include the following:
3 (1) The caregiver's name and current home address;
4 (2) The caregiver's birth date;
5 (3) The relationship of the caregiver to the minor;
6 (4) The minor's name;
7 (5) The minor's birth date;

8 (6) The length of time the minor has resided with the
9 caregiver;

10 (7) The caregiver’s signature under oath affirming the truth
11 of the matter asserted in the affidavit;

12 (8) The signature of the minor’s parent, guardian or legal
13 custodian consenting to the caregiver’s authority over the
14 minor’s health care. The signature of the minor’s parent,
15 guardian or legal custodian is not necessary if the affidavit
16 includes the following:

17 (A) A statement that the caregiver has attempted, but has
18 been unable to obtain, the signature of the minor’s parent,
19 guardian or legal custodian;

20 (B) A statement that the minor’s parent, guardian or legal
21 custodian has not refused to give consent for health care and
22 treatment of the minor child; and

23 (C) A description, in detail, of the attempts the caregiver
24 made to obtain the signature of the minor’s parent, guardian or
25 legal custodian; and

26 (9) A statement, as follows:

27 “General Notices:

28 This declaration does not affect the rights of the minor’s
29 parent, guardian or legal custodian regarding the care, custody
30 and control of the minor, other than with respect to health care,
31 and does not give the caregiver legal custody of the minor.

32 This affidavit is valid for one year unless the minor no
33 longer resides in the caregiver’s home. Furthermore, the minor’s
34 parent, guardian or legal custodian may at any time rescind this
35 affidavit of caregiver consent for a minor’s health care by
36 providing written notification of the rescission to the appropriate
37 health care professional.

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

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

1 (a) The affidavit of caregiver consent for a minor’s health
2 care is superseded by written notification from the minor’s
3 parent, guardian or legal custodian to the health care

4 professionals providing services to the minor that the affidavit
5 has been rescinded.

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

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

1 (a) Any person who relies in good faith on the affidavit of
2 caregiver consent for a minor's health care:

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

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

7 (b) Subsection (a) of this section applies even if medical
8 treatment is provided to a minor in contravention of a decision

9 of a parent, legal custodian or guardian of the minor who signed
10 the affidavit if the person providing care has no actual
11 knowledge of the decision of the parent, legal custodian or
12 guardian.

§49-2-706. Exceptions to applicability.

1 The consent authorized by this section is not applicable for
2 purposes of the Individuals with Disabilities Education Act, 20
3 U.S.C. §1400 *et seq.*, or Section 504 of the Rehabilitation Act of
4 1973, 29 U.S.C. §701.

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

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

§49-2-708. Rule-making authority.

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

PART VIII. REPORTS OF CHILDREN SUSPECTED OF ABUSE.

§49-2-801. Purpose.

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

3 (1) To protect the best interests of the child;

4 (2) To offer protective services in order to prevent any
5 further harm to the child or any other children living in the
6 home;

7 (3) To stabilize the home environment, to preserve family
8 life whenever possible;

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

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

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

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

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

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

21 (1) Receive or arrange for the receipt of all reports of
22 children known or suspected to be abused or neglected on a
23 twenty-four hour, seven-day-a-week basis and cross-file all

24 reports under the names of the children, the family and any
25 person substantiated as being an abuser or neglecter by
26 investigation of the Department of Health and Human
27 Resources, with use of cross-filing of the person's name limited
28 to the internal use of the department;

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

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

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

44 (5) In addition to any other requirements imposed by this
45 section, when any matter regarding child custody is pending, the
46 circuit court or family court may refer allegations of child abuse
47 and neglect to the local child protective services office for
48 investigation of the allegations as defined by this chapter and
49 require the local child protective services office to submit a
50 written report of the investigation to the referring circuit court or
51 family court within the time frames set forth by the circuit court
52 or family court.

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

57 (e) The local child protective services office shall be
58 responsible for providing, directing or coordinating the
59 appropriate and timely delivery of services to any child
60 suspected or known to be abused or neglected, including services
61 to the child's family and those responsible for the child's care.

62 (f) To carry out the purposes of this article, all departments,
63 boards, bureaus and other agencies of the state or any of its

64 political subdivisions and all agencies providing services under
65 the local child protective services plan shall, upon request,
66 provide to the local child protective services office any
67 assistance and information as will enable it to fulfill its
68 responsibilities.

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

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

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

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

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

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

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

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

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

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

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

102 (h) No child protective services caseworker may be held
103 personally liable for any professional decision or action taken

104 pursuant to that decision in the performance of his or her official
105 duties as set forth in this section or agency rules promulgated
106 thereupon. However, nothing in this subsection protects any
107 child protective services worker from any liability arising from
108 the operation of a motor vehicle or for any loss caused by gross
109 negligence, willful and wanton misconduct or intentional
110 misconduct.

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

1 (a) Any medical, dental or mental health professional,
2 Christian Science practitioner, religious healer, school teacher or
3 other school personnel, social service worker, child care or foster
4 care worker, emergency medical services personnel, peace
5 officer or law-enforcement official, humane officer, member of
6 the clergy, circuit court judge, family court judge, employee of
7 the Division of Juvenile Services, magistrate, youth camp
8 administrator or counselor, employee, coach or volunteer of an
9 entity that provides organized activities for children, or
10 commercial film or photographic print processor who has
11 reasonable cause to suspect that a child is neglected or abused or

12 observes the child being subjected to conditions that are likely to
13 result in abuse or neglect shall immediately, and not more than
14 forty-eight hours after suspecting this abuse or neglect, report the
15 circumstances or cause a report to be made to the Department of
16 Health and Human Resources. In any case where the reporter
17 believes that the child suffered serious physical abuse or sexual
18 abuse or sexual assault, the reporter shall also immediately
19 report, or cause a report to be made, to the State Police and any
20 law-enforcement agency having jurisdiction to investigate the
21 complaint. Any person required to report under this article who
22 is a member of the staff or volunteer of a public or private
23 institution, school, entity that provides organized activities for
24 children, facility or agency shall also immediately notify the
25 person in charge of the institution, school, entity that provides
26 organized activities for children, facility or agency, or a
27 designated agent thereof, who may supplement the report or
28 cause an additional report to be made.

29 **(b)** Any person over the age of eighteen who receives a
30 disclosure from a credible witness or observes any sexual abuse
31 or sexual assault of a child, shall immediately, and not more than

32 forty-eight hours after receiving that disclosure or observing the
33 sexual abuse or sexual assault, report the circumstances or cause
34 a report to be made to the Department of Health and Human
35 Resources or the State Police or other law-enforcement agency
36 having jurisdiction to investigate the report. In the event that the
37 individual receiving the disclosure or observing the sexual abuse
38 or sexual assault has a good faith belief that the reporting of the
39 event to the police would expose either the reporter, the subject
40 child, the reporter's children or other children in the subject
41 child's household to an increased threat of serious bodily injury,
42 the individual may delay making the report while he or she
43 undertakes measures to remove themselves or the affected
44 children from the perceived threat of additional harm and the
45 individual makes the report as soon as practicable after the threat
46 of harm has been reduced. The law-enforcement agency that
47 receives a report under this subsection shall report the
48 allegations to the Department of Health and Human Resources
49 and coordinate with any other law-enforcement agency, as
50 necessary to investigate the report.

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

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

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

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

1 Subject to appropriation in the budget, the department shall
2 conduct educational and training programs for persons required
3 to report suspected abuse or neglect, and the general public, as

4 well as implement evidence-based programs that reduce
5 incidents of child maltreatment including sexual abuse. Training
6 for persons require to report and the general public shall include:
7 (1) Indicators of child abuse and neglect;
8 (2) Tactics used by sexual abusers;
9 (3) How and when to make a report; and
10 (4) Protective factors that prevent abuse and neglect in order
11 to promote adult responsibility for protecting children,
12 encourage maximum reporting of child abuse and neglect, and
13 to improve communication, cooperation and coordination among
14 all agencies involved in the identification, prevention and
15 treatment of the abuse and neglect of children.

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

1 In the event a child protective service worker, in response to
2 a report mandated by section eight hundred two and eight
3 hundred three of this article, forms a reasonable suspicion that an
4 animal is the victim of cruel or inhumane treatment, he or she
5 shall report the suspicion and the basis therefor to the county
6 humane officer provided under section one, article ten, chapter

7 seven of this code within twenty-four hours of the response to
8 the report.

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

1 Any person or official who is required pursuant to section
2 eight hundred three of this article to report cases of suspected
3 child abuse or neglect and who has reasonable cause to suspect
4 that a child has died as a result of child abuse or neglect, shall
5 report that fact to the appropriate medical examiner or coroner.
6 Upon the receipt of that report, the medical examiner or coroner
7 shall cause an investigation to be made and report his or her
8 findings to the police, the appropriate prosecuting attorney, the
9 local child protective service agency and, if the institution
10 making a report is a hospital, to the hospital.

§49-2-808. Photographs and X rays.

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

6 rays taken shall be sent to the appropriate child protective
7 service as soon as possible.

§49-2-809. Reporting procedures.

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

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

§49-2-810. Immunity from liability.

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

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

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

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

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

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

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

PART IX. GENERAL AUTHORITY AND DUTIES**OF THE DIVISION OF JUVENILE SERVICES.****§49-2-901. Policy; cooperation.**

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

2 (1) Provide a coordinated continuum of care for its children
3 who have been charged with an offense which would be a crime
4 if committed by an adult, whether they are taken into custody
5 and securely detained or released pending adjudication by the
6 court; and

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

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

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

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

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

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

16 (2) The Office of Juvenile Corrections, which is also
17 responsible for operating and maintaining juvenile corrections
18 facilities; and

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

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

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

1 The Division of Juvenile Services has the following duties
2 as to juveniles in detention facilities or juvenile corrections
3 facilities:

4 (1) Cooperating with the United States Department of Justice
5 in operating, maintaining and improving juvenile correction
6 facilities and predispositional detention centers, complying with

7 regulations thereof, and receiving and expending federal funds
8 for the services;

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

12 (3) Assigning the necessary personnel and providing
13 adequate space for the support and operation of any facility
14 providing for the secure detention of children committed to the
15 care of the Division of Juvenile Services;

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

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

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

25 (7) Working in cooperation with the Department of Health
26 and Human Resources in establishing, maintaining, and

27 continuously refining and developing a balanced and
28 comprehensive state program for children who have been
29 adjudicated delinquent;

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

33 (A) Prevent juvenile delinquency;

34 (B) To divert juveniles from the juvenile justice system;

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

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

39 Working in collaboration with the Department of Health and
40 Human Resources, the Division of Juvenile Services shall
41 employ a comprehensive strategy for the social and rehabilitative
42 programming and treatment of juveniles, consistent with the
43 principles adopted by the Office of Juvenile Justice and
44 Delinquency Prevention of the Office of Justice Programs of the
45 United States Department of Justice.

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

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

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

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

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

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

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

5 (b) In providing or arranging for the necessary medical and
6 other care and treatment of juveniles committed to the division's
7 custody, the director shall use service providers who provide the
8 same or similar services to juveniles under existing contracts
9 with the Department of Health and Human Resources. In order

10 to obtain the most advantageous reimbursement rates, to
11 capitalize on an economy of scale and to avoid duplicative
12 systems and procedures, the department shall administer and
13 process all claims for medical or other treatment of juveniles
14 committed to the division's custody.

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

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

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

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

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

24 (c) Not later than sixty days after commitment pursuant to
25 this section the juvenile shall be remanded and delivered to the
26 custody of the director, an appropriate agency or any other
27 person that the court by its order directs. Within ten days after
28 the end of the examination, diagnosis and classification, the
29 Director of the Division of Juvenile Services shall make or cause
30 to be made a report to the court containing the results, findings,

31 conclusions and recommendations of the multidisciplinary team
32 with respect to that juvenile.

**§49-2-908. Educational services for juveniles placed in
predispositional and postdispositional facilities;
authorization; cooperation; rule-making.**

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

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

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

11 (2) To hire classroom teachers and other school personnel
12 necessary to provide adequate and appropriate education
13 opportunities to these juveniles; and

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

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

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

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

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

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

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

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

1 (a) The Director of Juvenile Services may establish at each
2 facility under his or her jurisdiction a "Juvenile Trustee Fund".
3 The administrator or designee of each facility may receive and
4 take charge of the money and personal property, as defined by
5 policy, of all juveniles in his or her facility and all money or
6 personal property, as defined by policy, sent to the juveniles or
7 earned by the juveniles as compensation for work performed
8 while they are domiciled there. The administrator or designee
9 shall credit the money and earnings to the juveniles entitled to it
10 and shall keep an accurate account of all the money and personal
11 property so received, which account is subject to examination by
12 the Director of Juvenile Services and the Assistant Director of

13 Budget and Finance of the Division of Juvenile Services. The
14 administrator or designee shall deposit the moneys in one or
15 more responsible banks in accounts to be designated a “Juvenile
16 Trustee Fund”.

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

24 (c) The administrator or designee shall deliver to the juvenile
25 at the time he or she leaves the facility, or as soon as practicable
26 after departure, all personal property, moneys and earnings then
27 credited to the juvenile, or in case of the death of the juvenile
28 before authorized release from the facility, the administrator or
29 designee shall deliver the property to the juvenile’s personal
30 representative. If a conservator is appointed for the juvenile
31 while he or she is domiciled at the facility, the administrator or
32 designee shall deliver to the conservator, upon proper demand,

33 all moneys and personal property belonging to the juvenile that
34 are in the custody of the administrator.

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

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

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

1 (a) There is hereby established a special revenue account in
2 the State Treasury for each juvenile benefit fund established by
3 the director. Moneys received by an institution for deposit in an
4 juvenile benefit fund shall be deposited with the State Treasurer

5 to be credited to the special revenue account created for the
6 institution's juvenile benefit fund. Moneys in a special revenue
7 account established for a juvenile benefit fund may be expended
8 by the institution for the purposes set forth in this section.

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

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

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

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

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

24 (5) Any funds confiscated considered contraband.

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

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

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

32 (3) Rental of videos;

33 (4) Payment of video license;

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

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

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

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

PART X. WEST VIRGINIA

JUVENILE OFFENDER REHABILITATION ACT.

§49-2-1001. Purpose; intent.

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

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

1 (a) The Department of Health and Human Resources and the
2 Division of Juvenile Services of the Department of Military
3 Affairs and Public Safety shall establish programs and services

4 designed to prevent juvenile delinquency, to divert juveniles
5 from the juvenile justice system, to provide community-based
6 alternatives to juvenile detention and correctional facilities and
7 to encourage a diversity of alternatives within the child welfare
8 and juvenile justice system. The development, maintenance and
9 expansion of programs and services may include, but not be
10 limited to, the following:

11 (1) Community-based programs and services for the
12 prevention and treatment of juvenile delinquency through the
13 development of foster-care and shelter-care homes, group
14 homes, halfway houses, homemaker and home health services,
15 twenty-four hour intake screening, volunteer and crisis home
16 programs, day treatment and any other designated
17 community-based diagnostic, treatment or rehabilitative service;

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

22 (3) Youth service bureaus and other community-based
23 programs to divert youth from the juvenile court or to support,

24 counsel, or provide work and recreational opportunities for status
25 offenders, juvenile delinquents and other youth to help prevent
26 delinquency;

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

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

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

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

39 (8) A statewide program designed to reduce the number of
40 commitments of juveniles to any form of juvenile facility as a
41 percentage of the state juvenile population; to increase the use of
42 nonsecure community-based facilities as a percentage of total

43 commitments to juvenile facilities; and to discourage the use of
44 secure incarceration and detention; and

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

48 (b)(1) The Department of Health and Human Resources shall
49 establish an individualized program of rehabilitation for each
50 status offender referred to the department and to each alleged
51 juvenile delinquent referred to the department after being
52 allowed a preadjudicatory community supervision period by the
53 juvenile court, and for each adjudicated juvenile delinquent who,
54 after adjudication, is referred to the department for investigation
55 or treatment or whose custody is vested in the department.

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

61 (3) For alleged juvenile delinquents and status offenders,
62 those individualized program of rehabilitation shall be furnished

63 to the juvenile court and made available to counsel for the
64 juvenile; it may be modified from time to time at the direction of
65 the department or by order of the juvenile court.

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

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

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

1 (a) The Department of Health and Human Resources shall
2 establish and maintain one or more rehabilitative facilities to be
3 used exclusively for the lawful custody of status offenders. Each
4 facility will be a nonsecure facility having as its purpose the

5 rehabilitation of status offenders. The facility will have a bed
6 capacity for not more than twenty juveniles, and shall minimize
7 the institutional atmosphere and prepare the juvenile for
8 reintegration into the community.

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

22 **(c) The board of education of the county in which the facility**
23 is located shall provide instruction for juveniles residing at the
24 facility. Residents who can be permitted to do so shall attend

25 local schools, and instruction shall otherwise take place at the
26 facility.

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

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

1 There is created within the State Treasury a special revenue
2 account designated “The Juvenile Services Reimbursement
3 Offender Fund” within and for the benefit of the Division of
4 Juvenile Services for expenses incurred in servicing juvenile
5 status offenders in need of stabilization and specialized
6 supervision. Moneys shall be paid into the account by the
7 Department of Health and Human Resources, based upon an
8 established per diem rate, or other funding sources. The
9 Department of Health and Human Resources and the Division of
10 Juvenile Services shall jointly establish the per diem rate to be
11 paid into the fund by the Department of Health and Human
12 Resources for each juvenile status offender in need of
13 stabilization and specialized supervision by the Division of
14 Juvenile Services pursuant to this article and by cooperative

15 agreement. The Director of Juvenile Services is authorized to
16 make expenditures from the fund in accordance with article
17 three, chapter twelve of this code to offset expenses incurred by
18 the Division of Juvenile Services in housing, treatment and
19 caring for juvenile offenders.

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

1 The Department of Health and Human Resources may
2 require any juvenile committed to its legal custody to remain at
3 and to return to the residence to which the juvenile is assigned
4 by the department or by the juvenile court. In aid of that
5 authority, and upon request of a designated employee of the
6 department, any police officer, sheriff, deputy sheriff, or juvenile
7 court probation officer is authorized to take the juvenile into
8 custody and return the juvenile to his or her place of residence or
9 into the custody of a designated employee of the department.

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

1 (a) The Department of Health and Human Resources and the
2 Division of Juvenile Services shall annually review its programs
3 and services and submit a report by December 31, of each year
4 to the Governor, the Legislature and the Supreme Court of

5 Appeals. This report shall analyze and evaluate the effectiveness
6 of the programs and services being carried out by the
7 Department of Health and Human Resources or the Division of
8 Juvenile Services. That report shall include, but is not limited to:

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

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

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

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

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

23 (b) The Department of Health and Human Resources and the
24 Division of Juvenile Services shall prepare a descriptive

25 catalogue of its juvenile programs and services available in local
26 communities throughout this state and shall distribute copies of
27 the same to every juvenile court in the state and, at the direction
28 of the juvenile court, the catalogue shall be distributed to
29 attorneys practicing before the court. The catalogue shall:

30 (1) Be made available to members of the general public upon
31 request;

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

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

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

ARTICLE 3. SPECIALIZED ADVOCACY PROGRAMS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (1) Standards: CASA programs shall be members in good
4 standing with the West Virginia Court Appointed Special
5 Advocate Association, Inc., and the National Court Appointed
6 Special Advocates Association and adhere to all standards set
7 forth by these entities.

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

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

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

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

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

ARTICLE 4. COURT ACTIONS.

PART I. GENERAL PROVISIONS.

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

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

§49-4-102. Procedure for appealing decisions.

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

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

1 Any evidence given in any cause or proceeding under this
2 chapter, or any order, judgment or finding therein, or any
3 adjudication upon the status of juvenile delinquent heretofore

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

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

1 (a) The Supreme Court of Appeals, in consultation with the
2 Department of Health and Human Resources and the Division of
3 Juvenile Services in order to eliminate unnecessary state funding
4 of out-of-home placements where federal funding is available,
5 shall develop and disseminate form court orders to effectuate

6 chapter forty-nine of this code which authorize disclosure and
7 transfer of juvenile records between agencies while requiring
8 maintenance of confidentiality, Child Welfare Services, 42
9 U.S.C. §620, et seq., and 42 U.S.C. §670, et seq., relating to the
10 promulgation of uniform court orders for placement of minor
11 children and the rules promulgated thereunder, for use in the
12 courts of the state.

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

§49-4-105. Hearing required to determine “reasonable efforts.”

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

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

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

§49-4-107. Penalties.

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

§49-4-108. Payment of services.

1 At any time during any proceedings brought pursuant to this
2 article, the court may upon its own motion, or upon a motion of
3 any party, order the Department of Health and Human Resources
4 to pay for professional services rendered by a psychologist,
5 psychiatrist, physician, therapist or other health care professional
6 to a child or other party to the proceedings. Professional services
7 include, but are not limited to, treatment, therapy, counseling,
8 evaluation, report preparation, consultation and preparation of
9 expert testimony. The Department of Health and Human
10 Resources shall set the fee schedule for the services in

11 accordance with the Medicaid rate, if any, or the customary rate
12 and adjust the schedule as appropriate. Every psychologist,
13 psychiatrist, physician, therapist or other health care professional
14 shall be paid by the Department of Health and Human Resources
15 upon completion of services and submission of a final report or
16 other information and documentation as required by the policies
17 and procedures implemented by the Department of Health and
18 Human Resources.

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

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

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

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

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

16 (b) For each transitioning adult as that term is defined in
17 section two hundred two, article one of this chapter who remains
18 in foster care, the circuit court shall conduct status review

19 hearings as described in subsection (a) of this section once every
20 three months until permanency is achieved.

21 (c) For each child or transitioning adult who continues to
22 remain in foster care, the circuit court shall conduct a
23 permanency hearing no later that twelve months after the date
24 the child or transitioning adult is considered to have entered
25 foster care, and at least once every twelve months thereafter until
26 permanency is achieved. For purposes of permanency planning
27 for transitioning adults, the circuit court shall make factual
28 findings and conclusions of law as to whether the department
29 made reasonable efforts to finalize a permanency plan to prepare
30 a transitioning adult for emancipation or independence or
31 another approved permanency option such as, but not limited to,
32 adoption or legal guardianship pursuant to the West Virginia
33 Guardianship and Conservatorship Act.

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

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

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

18 parents and that continuation of the foster care arrangement is in
19 the best interests of the child, the department may, in its
20 discretion, elect not to terminate the foster care arrangement or
21 arrangements.

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

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

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

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

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

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

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

42 (c) When a child has been residing in a foster home for a
43 period in excess of six consecutive months in total and for a
44 period in excess of thirty days after the parental rights of the
45 child's biological parents have been terminated and the foster
46 parents have not made an application to the department to
47 establish an intent to adopt the child within thirty days of
48 parental rights being terminated, the department may terminate
49 the foster care arrangement if another, more beneficial,
50 long-term placement of the child is developed. If the child is
51 twelve years of age or older, the child shall be provided the
52 option of remaining in the existing foster care arrangement if the
53 child so desires and if continuation of the existing arrangement
54 is in the best interest of the child.

55 (d)(1) When a child is placed into foster care or becomes
56 eligible for adoption and a sibling or siblings have previously

57 been placed in foster care or have been adopted, the department
58 shall notify the foster parents or adoptive parents of the
59 previously placed or adopted sibling or siblings of the child's
60 availability for foster care placement or adoption to determine if
61 the foster parents or adoptive parents are desirous of seeking a
62 foster care arrangement or adoption of the child.

63 (2) Where a sibling or siblings have previously been
64 adopted, the department shall also notify the adoptive parents of
65 a sibling of the child's availability for foster care placement in
66 that home and a foster care arrangement entered into to place the
67 child in the home if the adoptive parents of the sibling are
68 otherwise qualified or can become qualified to enter into a foster
69 care arrangement with the department and if the arrangement is
70 in the best interests of the child.

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

75 (e)(1) When a child is in a foster care arrangement and is
76 residing separately from a sibling or siblings who are in another

77 foster home or who have been adopted by another family and the
78 parents with whom the placed or adopted sibling or siblings
79 reside have made application to the department to establish an
80 intent to adopt or to enter into a foster care arrangement
81 regarding a child so that the child may be united or reunited with
82 a sibling or siblings, the department shall, upon a determination
83 of the fitness of the persons and household seeking to enter into
84 a foster care arrangement or seek an adoption which would unite
85 or reunite siblings, and if termination and new placement are in
86 the best interests of the children, terminate the foster care
87 arrangement and place the child in the household with the sibling
88 or siblings.

89 (2) If the department is of the opinion based upon available
90 evidence that residing in the same home would have a harmful
91 physical, mental or psychological effect on one or more of the
92 sibling children or if the child has a physical or mental disability
93 which the existing foster home can better accommodate, or if the
94 department can document that the reunification of the siblings
95 would not be in the best interest of one or all of the children, the

96 department may petition the circuit court for an order allowing
97 the separation of the siblings to continue.

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

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

111 (f) Where two or more siblings have been placed in separate
112 foster care arrangements and the foster parents of the siblings
113 have made application to the department to enter into a foster
114 care arrangement regarding the sibling or siblings not in their

115 home or where two or more adoptive parents seek to adopt a
116 sibling or siblings of a child they have previously adopted, the
117 department's determination as to placing the child in a foster
118 care arrangement or in an adoptive home shall be based solely
119 upon the best interests of the siblings.

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

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

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

13 (2) They are emotionally disturbed;

14 (3) They are older children;

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

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

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

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

32 (3) The specific financial terms of the subsidy shall be
33 included in the agreement between the department and the

34 adoptive parents or legal guardians. The agreement may
35 recognize and provide for direct payment by the department of
36 attorney's fees to an attorney representing the adoptive parent.

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

41 (5) In addition, the department shall provide either Medicaid
42 or other health insurance coverage for any special needs child for
43 whom there is an adoption or legal guardianship assistance
44 agreement between the department and the adoptive parent or
45 legal guardian and who the department determines cannot be
46 placed with an adoptive parent or legal guardian without medical
47 assistance because the child has special needs for medical,
48 mental health or rehabilitative care.

49 (c) After reasonable efforts have been made without the use
50 of subsidy and no appropriate adoptive family or legal guardian
51 has been found for the child, the department shall certify the
52 child as eligible for a subsidy in the event of adoption or a legal

53 guardianship. Reasonable efforts to place a child without a
54 subsidy shall not be required if it is in the best interest of the
55 child because of the factors as the existence of significant
56 emotional ties developed between the child and the prospective
57 parent or guardian while in care as a foster child.

58 (d) If the child is the dependent of a voluntary licensed
59 child-placing agency, that agency shall present to the department
60 evidence of the inability to place the child for adoption or legal
61 guardianship without the use of subsidy or evidence that the
62 efforts would not be in the best interests of the child. In no event
63 may the value of the services and assistance provided by the
64 department under an agreement pursuant to this section exceed
65 the value of assistance available to foster families in similar
66 circumstances. All records regarding subsidized adoptions or
67 legal guardianships are to be held in confidence; however,
68 records regarding the payment of public funds for subsidized
69 adoptions or legal guardianships shall be available for public
70 inspection provided they do not directly or indirectly identify
71 any child or persons receiving funds for the child.

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

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

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

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

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

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

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

20 (3) For purposes of any placement of a child for adoption by
21 the department, the department shall first consider the suitability
22 and willingness of any known grandparent or grandparents to
23 adopt the child. Once grandparents who are interested in
24 adopting the child have been identified, the department shall
25 conduct a home study evaluation, including home visits and

26 individual interviews by a licensed social worker. If the
27 department determines, based on the home study evaluation, that
28 the grandparents would be suitable adoptive parents, it shall
29 assure that the grandparents are offered the placement of the
30 child prior to the consideration of any other prospective adoptive
31 parents.

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

38 (b)(1) Whenever the mother has executed a relinquishment
39 pursuant to this section, and the legal, determined, putative,
40 outsider or unknown father, as those terms are defined pursuant
41 to part one, article twenty-two, chapter forty-eight of this code,
42 has not executed a relinquishment, the child welfare agency or
43 the department may, by verified petition, seek to have the
44 father's rights terminated based upon the grounds of

45 abandonment or neglect of the child. Abandonment may be
46 established in accordance with section three hundred six, article
47 twenty-two, chapter forty-eight of this code.

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

53 (3) In addition, notice shall be given to any putative, outsider
54 or unknown father who has asserted or exercised parental rights
55 and duties to and with the child and who has not relinquished
56 any parental rights and the rights have not otherwise been
57 terminated, or who has not had reasonable opportunity before or
58 after the birth of the child to assert or exercise those rights,
59 except that if the child is more than six months old at the time
60 the notice would be required and the father has not asserted or
61 exercised his or her parental rights and he or she knew the
62 whereabouts of the child, then the father shall be presumed to
63 have had reasonable opportunity to assert or exercise any rights.

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

70 (2) The notice shall inform the person that his or her parental
71 rights, if any, may be terminated in the proceeding and that the
72 person may appear and defend any rights within twenty days of
73 the service. In the case of a person who is a nonresident or whose
74 whereabouts are unknown, service shall be achieved: (1) By
75 personal service; (2) by registered or certified mail, return
76 receipt requested, postage prepaid, to the person's last known
77 address, with instructions to forward; or (3) by publication. If
78 personal service is not acquired, then if the person giving notice
79 has any knowledge of the whereabouts of the person to be
80 served, including a last known address, service by mail shall be
81 first attempted as herein provided. Service achieved by mail
82 shall be complete upon mailing and is sufficient service without

83 the need for notice by publication. In the event that no return
84 receipt is received giving adequate evidence of receipt of the
85 notice by the addressee or of receipt of the notice at the address
86 to which the notice was mailed or forwarded, or if the
87 whereabouts of the person are unknown, then the person required
88 to give notice shall file with the court an affidavit setting forth
89 the circumstances of any attempt to serve the notice by mail, and
90 the diligent efforts to ascertain the whereabouts of the person to
91 be served. If the court determines that the whereabouts of the
92 person to be served cannot be ascertained and that due diligence
93 has been exercised to ascertain the person's whereabouts, then
94 the court shall order service of the notice by publication as a
95 Class II publication in compliance with article three, chapter
96 fifty-nine of this code, and the publication area shall be the
97 county where the proceedings are had, and in the county where
98 the person to be served was last known to reside. In the case of
99 a person under disability, service shall be made on the person
100 and his or her personal representative, or if there be none, on a
101 guardian ad litem.

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

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

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

§49-4-115. Emancipation.

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

6 (b) Upon a showing that the child can provide for his or her
7 physical and financial well-being and has the ability to make

8 decisions for himself or herself, the court may for good cause
9 shown declare the child emancipated. The child shall thereafter
10 have full capacity to contract in his or her own right and the
11 parents or custodians have no right to the custody and control of
12 the child or duty to provide the child with care and financial
13 support.

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

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

1 (a) Within ninety days of the date of the signatures to a
2 voluntary placement agreement, after receipt of physical
3 custody, the department shall file with the court a petition for
4 review of the placement. The petition shall include:

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

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

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

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

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

16 (1) The child's attorney;

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

18 (3) The child's parents or guardians;

19 (4) The child's foster parents;

20 (5) Any preadoptive parent or relative providing care for the
21 child; and

22 (6) Any other persons as the court may in its discretion
23 direct.

24 The child's presence at the hearing may be waived by the
25 child's attorney at the request of the child or if the child would
26 suffer emotional harm.

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

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

32 (2) Specifying under what conditions the child's placement
33 will continue;

34 (3) Specifying whether or not the department is required to
35 and has made reasonable efforts to preserve and to reunify the
36 family; and

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

PART II. EMERGENCY POSSESSION OF CERTAIN
RELINQUISHED CHILDREN.

§49-4-201. Accepting possession of certain relinquished children.

1 (a) A hospital or health care facility operating in this state,
2 shall, without a court order, take possession of a child if the child

3 is voluntarily delivered to the hospital or health care facility by
4 the child's parent within thirty days of the child's birth, and the
5 parent did not express an intent to return for the child.

6 (b) A hospital or health care facility that takes possession of
7 a child under this article shall perform any act necessary to
8 protect the physical health or safety of the child. In accepting
9 possession of the child, the hospital or health care facility may
10 not require the person to identify himself or herself and shall
11 otherwise respect the person's desire to remain anonymous.

§49-4-202. Notification of possession of relinquished child;
department responsibilities.

1 (a) Not later than the close of the first business day after the
2 date on which a hospital or health care facility takes possession
3 of a child pursuant to section two hundred one of this article, the
4 hospital or health care facility shall notify the Child Protective
5 Services division of the Department of Health and Human
6 Resources that it has taken possession of the child and shall
7 provide the division any information provided by the parent
8 delivering the child. The hospital or health care facility shall

9 refer any inquiries about the child to the Child Protective
10 Services division.

11 (b) The Department of Health and Human Resources shall
12 assume the care, control and custody of the child as of the time
13 of delivery of the child to the hospital or health care facility, and
14 may contract with private child care agency for the care and
15 placement of the child after the child leaves the hospital or
16 health care facility.

§49-4-203. Filing petition after accepting possession of relinquished child.

1 A child of whom the Department of Health and Human
2 Resources assumes care, control and custody under this article
3 is a relinquished child and to be treated in all respects as a child
4 taken into custody pursuant to section three hundred three,
5 article four of this chapter. Upon taking custody of a child under
6 this article, the department, with the cooperation of the county
7 prosecuting attorney, shall cause a petition to be presented
8 pursuant to section six hundred two, article four of this chapter.
9 The department and county prosecuting attorney may not
10 identify in the petition the parent(s) who utilized this article to

- 11 relinquish his or her child. Thereafter, the department shall
12 proceed in compliance with part six, of this article.

§49-4-204. Immunity from certain prosecutions.

- 1 A parent who relinquishes his or her child in good faith
2 within thirty days of the child's birth under this article is
3 immune from prosecution under subsection (a), section four,
4 article eight-d, chapter sixty-one of this code.

§49-4-205. Adoption eligibility.

- 1 The child is eligible for adoption as an abandoned child
2 under chapter forty-eight of the code.

PART III. EMERGENCY CUSTODY OF CHILDREN

PRIOR TO PETITION.

**§49-4-301. Custody of a neglected child by law enforcement in
emergency situations; protective custody;
requirements; notices; petition for appointment of
special guardian; discharge; immunity.**

- 1 (a) A child believed to be a neglected child or an abused
2 child may be taken into custody without the court order
3 otherwise required by section six hundred two of this article by
4 a law-enforcement officer if:

5 (1) The child is without supervision or shelter for an
6 unreasonable period of time in light of the child's age and the
7 ability to care for himself or herself in circumstances presenting
8 an immediate threat of serious harm to that child; or

9 (2) That officer determines that the child is in a condition
10 requiring emergency medical treatment by a physician and the
11 child's parents, parent, guardian or custodian refuses to permit
12 the treatment, or is unavailable for consent. A child who suffers
13 from a condition requiring emergency medical treatment, whose
14 parents, parent, guardian or custodian refuses to permit the
15 providing of the emergency medical treatment, may be retained
16 in a hospital by a physician against the will of the parents,
17 parent, guardian or custodian, as provided in subsection (c) of
18 this section.

19 (b) A child taken into protective custody pursuant to
20 subsection (a) of this section may be housed by the department
21 or in any authorized child shelter facility. The authority to hold
22 the child in protective custody, absent a petition and proper order
23 granting temporary custody pursuant to section six hundred two

24 of this article, terminates by operation of law upon the happening
25 of either of the following events, whichever occurs first:

26 (1) The expiration of ninety-six hours from the time the child
27 is initially taken into protective custody; or

28 (2) The expiration of the circumstances which initially
29 warranted the determination of an emergency situation.

30 No child may be considered in an emergency situation and
31 custody withheld from the child's parents, parent, guardian or
32 custodian presenting themselves, himself or herself in a fit and
33 proper condition and requesting physical custody of the child.

34 No child may be removed from a place of residence as in an
35 emergency under this section until after:

36 (1) All reasonable efforts to make inquiries and
37 arrangements with neighbors, relatives and friends have been
38 exhausted; or if no arrangements can be made; and

39 (2) The state department may place in the residence a home
40 services worker with the child for a period of not less than
41 twelve hours to await the return of the child's parents, parent,
42 guardian or custodian.

43 Prior to taking a child into protective custody as abandoned
44 at a place at or near the residence of the child, the
45 law-enforcement officer shall post a typed or legibly handwritten
46 notice at the place the child is found, informing the parents,
47 parent, guardian or custodian that the child was taken by a
48 law-enforcement officer, the name, address and office telephone
49 number of the officer, the place and telephone number where
50 information can continuously be obtained as to the child's
51 whereabouts, and if known, the worker for the state department
52 having responsibility for the child.

53 (c) A child taken into protective custody pursuant to this
54 section for emergency medical treatment may be held in a
55 hospital under the care of a physician against the will of the
56 child's parents, parent, guardian or custodian for a period not to
57 exceed ninety-six hours. The parents, parent, guardian or
58 custodian may not be denied the right to see or visit with the
59 child in a hospital. The authority to retain a child in protective
60 custody in a hospital as requiring emergency medical treatment
61 terminates by operation of law upon the happening of either of
62 the following events, whichever occurs first:

63 (1) When the condition, in the opinion of the physician, no
64 longer required emergency hospitalization, or;

65 (2) Upon the expiration of ninety-six hours from the
66 initiation of custody, unless within that time, a petition is
67 presented and a proper order obtained from the circuit court.

68 (d) Prior to assuming custody of a child from a
69 law-enforcement officer, pursuant to this section, a physician or
70 worker from the department shall require a typed or legibly
71 handwritten statement from the officer identifying the officer's
72 name, address and office telephone number and specifying all
73 the facts upon which the decision to take the child into protective
74 custody was based, and the date, time and place of the taking.

75 (e) Any worker for the department assuming custody of a
76 child pursuant to this section shall immediately notify the
77 parents, parent, guardian or custodian of the child of the taking
78 of the custody and the reasons therefor, if the whereabouts of the
79 parents, parent, guardian or custodian are known or can be
80 discovered with due diligence; and if not, notice and explanation
81 shall be given to the child's closest relative, if his or her

82 whereabouts are known or can be discovered with due diligence
83 within a reasonable time. An inquiry shall be made of relatives
84 and neighbors, and if a relative or appropriate neighbor is willing
85 to assume custody of the child, the child will temporarily be
86 placed in custody.

87 (f) No child may be taken into custody under circumstances
88 not justified by this section or pursuant to section six hundred
89 two of this article without appropriate process. Any retention of
90 a child or order for retention of a child not complying with the
91 time limits and other requirements specified in this article shall
92 be void by operation of law.

93 (g) *Petition for appointment of special guardian.* — Upon
94 the verified petition of any person showing:

95 (1) That any person under the age of eighteen years is
96 threatened with or there is a substantial possibility that the
97 person will suffer death, serious or permanent physical or
98 emotional disability, disfigurement or suffering; and

99 (2) That disability, disfigurement or suffering is the result of
100 the failure or refusal of any parent, guardian or custodian to

101 procure, consent to or authorize necessary medical treatment, the
102 circuit court of the county in which the person is located may
103 direct the appointment of a special guardian for the purposes of
104 procuring, consenting to and giving authorization for the
105 administration of necessary medical treatment. The circuit court
106 may not consider any petition filed in accordance with this
107 section unless it is accompanied by a supporting affidavit of a
108 licensed physician.

109 (h) *Notice of petition.* — So far as practicable, the parents,
110 guardian or custodian of any person for whose benefit medical
111 treatment is sought shall be given notice of the petition for the
112 appointment of a special guardian under this section. Notice is
113 not necessary if it would cause a delay that would result in the
114 death or irreparable harm to the person for whose benefit
115 medical treatment is sought. Notice may be given in a form and
116 manner as may be necessary under the circumstances.

117 (i) *Discharge of special guardian.* — Upon the termination of
118 necessary medical treatment to any person under this section, the
119 circuit court order the discharge of the special guardian from any
120 further authority, responsibility or duty.

121 (j) Immunity from civil liability. — No person appointed
122 special guardian in accordance with this article is civilly liable
123 for any act done by virtue of the authority vested in him or her
124 by order of the circuit court.

**§49-4-302. Authorizing a family court judge to order custody of a
child in emergency situations; requirements;
orders; investigative reports; notification required.**

1 (a) Notwithstanding the jurisdictional limitations contained
2 in section two, article two-a, chapter fifty-one of this code,
3 family court judges are authorized to order the department to
4 take emergency custody of a child who is in the physical custody
5 of a party to an action or proceeding before the family court, if
6 the family court judge finds that there is clear and convincing
7 evidence that:

8 (1) There exists an imminent danger to the physical
9 well-being of the child as defined in section two hundred one,
10 article one of this chapter;

11 (2) The child is not the subject of a pending action before the
12 circuit court alleging abuse and neglect of the child; and

13 (3) There are no reasonable available alternatives to the
14 emergency custody order.

15 (b) An order entered pursuant to subsection (a) of this
16 section must include specific written findings.

17 (c) A copy of the order issued pursuant to subsection (a) of
18 this section shall be transmitted forthwith to the department, the
19 circuit court and the prosecuting attorney.

20 (d) Upon receipt of an order issued pursuant to subsection
21 (a) of this section, the department shall immediately respond and
22 assist the family court judge in emergency placement of the
23 child.

24 (e)(1) Upon receipt of an order issued pursuant to subsection
25 (a) of this section, the circuit court shall cause to be entered and
26 served, an administrative order in the name of and regarding the
27 affected child, directing the department to submit, within
28 ninety-six hours from the time the child was taken into custody,
29 an investigative report to both the circuit and family court.

30 (2) The investigative report shall include a statement of
31 whether the department intends to file a petition pursuant to
32 section six hundred two of this article.

33 (f)(1) An order issued pursuant to subsection (a) of this
34 section terminates by operation of law upon expiration of

35 ninety-six hours from the time the child is initially taken into
36 protective custody unless a petition is filed with the circuit court
37 under section six hundred two of this article within ninety-six
38 hours from the time the child is initially taken into protective
39 custody.

40 (2) The filing of a petition within ninety-six hours from the
41 time the child is initially taken into protective custody extends
42 the emergency custody order issued pursuant to subsection (a) of
43 this section until a preliminary hearing is held before the circuit
44 court, unless the circuit court orders otherwise.

45 (g)(1) Any worker for the department assuming custody of
46 a child pursuant to this section shall immediately notify the
47 parents, parent, grandparents, grandparent, guardian or custodian
48 of the child of the taking of the custody and the reasons therefor
49 if the whereabouts of the parents, parent, grandparents,
50 grandparent, guardian or custodian are known or can be
51 discovered with due diligence and, if not, a notice and
52 explanation shall be given to the child's closest relative if his or
53 her whereabouts are known or can be discovered with due
54 diligence within a reasonable time. An inquiry shall be made of

55 relatives and neighbors and, if an appropriate relative or
56 neighbor is willing to assume custody of the child, the child will
57 temporarily be placed in that person's custody.

58 (2) In the event no other reasonable alternative is available
59 for temporary placement of a child pursuant to subdivision (1) of
60 this subsection, the child may be housed by the department in an
61 authorized child shelter facility.

**§49-4-303. Emergency removal by department before filing of
petition; conditions; referee; application for
emergency custody; order.**

1 Prior to the filing of a petition, a child protective service
2 worker may take the child or children into his or her custody
3 (also known as removing the child) without a court order when:

4 (1) In the presence of a child protective service worker a
5 child or children are in an emergency situation which constitutes
6 an imminent danger to the physical well-being of the child or
7 children, as that phrase is defined in section two hundred one,
8 article one of this chapter; and

9 (2) The worker has probable cause to believe that the child
10 or children will suffer additional child abuse or neglect or will be

11 removed from the county before a petition can be filed and
12 temporary custody can be ordered.

13 After taking custody of the child or children prior to the
14 filing of a petition, the worker shall forthwith appear before a
15 circuit judge or referee of the county where custody was taken
16 and immediately apply for an order. If no judge or referee is
17 available, the worker shall appear before a circuit judge or
18 referee of an adjoining county, and immediately apply for an
19 order. This order shall ratify the emergency custody of the child
20 pending the filing of a petition.

21 The circuit court of every county in the state shall appoint at
22 least one of the magistrates of the county to act as a referee. He
23 or she serves at the will and pleasure of the appointing court, and
24 shall perform the functions prescribed for the position by this
25 subsection.

26 The parents, guardians or custodians of the child or children
27 may be present at the time and place of application for an order
28 ratifying custody. If at the time the child or children are taken
29 into custody by the worker he or she knows which judge or

30 referee is to receive the application, the worker shall so inform
31 the parents, guardians or custodians.

32 The application for emergency custody may be on forms
33 prescribed by the Supreme Court of Appeals or prepared by the
34 prosecuting attorney or the applicant, and shall set forth facts
35 from which it may be determined that the probable cause
36 described above in this subsection exists. Upon the sworn
37 testimony or other evidence as the judge or referee deems
38 sufficient, the judge or referee may order the emergency taking
39 by the worker to be ratified. If appropriate under the
40 circumstances, the order may include authorization for an
41 examination as provided in subsection (b), section six hundred
42 three of this article.

43 If a referee issues an order, the referee shall by telephonic
44 communication have that order orally confirmed by a circuit
45 judge of the circuit or an adjoining circuit who shall, on the next
46 judicial day, enter an order of confirmation. If the emergency
47 taking is ratified by the judge or referee, emergency custody of
48 the child or children is vested in the department until the

49 expiration of the next two judicial days, at which time any child
50 taken into emergency custody shall be returned to the custody of
51 his or her parent or guardian or custodian unless a petition has
52 been filed and custody of the child has been transferred under
53 section six hundred two of this article.

PART IV. MULTIDISCIPLINARY TEAMS, CASE PLANS,
TRANSITION PLANS AND AFTERCARE PLANS.

§49-4-401. Purpose; system to be a complement to existing programs.

1 (a) This article:
2 (1) Provides a system for evaluation of and coordinated
3 service delivery for children who may be victims of abuse or
4 neglect and children undergoing certain status offense and
5 delinquency proceedings;
6 (2) Establishes, as a complement to other programs of the
7 Department of Health and Human Resources, a multidisciplinary
8 screening, advisory and planning system to assist courts in
9 facilitating permanency planning, following the initiation of
10 judicial proceedings, to recommend alternatives and to
11 coordinate evaluations and in-community services; and

12 (3) Ensures that children are safe from abuse and neglect and
13 to coordinate investigation of alleged child abuse offenses and
14 competent criminal prosecution of offenders to ensure that
15 safety, as determined appropriate by the prosecuting attorney.

16 (b) Nothing in this article precludes any multidisciplinary
17 team from considering any case upon the consent of the
18 members of the team.

§49-4-402. Multidisciplinary investigative teams; establishment;
membership; procedures; coordination among
agencies; confidentiality.

1 (a) The prosecuting attorney of each county shall establish
2 a multidisciplinary investigative team in that county. The
3 multidisciplinary team shall be headed and directed by the
4 prosecuting attorney, or his or her designee, and includes as
5 permanent members:

6 (1) The prosecuting attorney, or his or her designee;

7 (2) A local child protective services caseworker from the
8 Department of Health and Human Resources;

9 (3) A local law-enforcement officer employed by a
10 law-enforcement agency in the county;

11 (4) A child advocacy center representative, where available;

12 (5) A health care provider with pediatric and child abuse
13 expertise, where available;

14 (6) A mental health professional with pediatric and child
15 abuse expertise, where available;

16 (7) An educator; and

17 (8) A representative from a licensed domestic violence
18 program serving the county.

19 The Department of Health and Human Resources and any
20 local law-enforcement agency or agencies selected by the
21 prosecuting attorney shall appoint their representatives to the
22 team by submitting a written designation of the team to the
23 prosecuting attorney of each county within thirty days of the
24 prosecutor's request that the appointment be made. Within
25 fifteen days of the appointment, the prosecuting attorney shall
26 notify the chief judge of each circuit within which the county is
27 situated of the names of the representatives so appointed. Any
28 other person or any other appointee of an agency who may
29 contribute to the team's efforts to assist a minor child as may be

30 determined by the permanent members of the team may also be
31 appointed as a member of the team by the prosecutor with
32 notification to the chief judge.

33 (b) Any permanent member of the multidisciplinary
34 investigative team shall refer all cases of accidental death of any
35 child reported to their agency and all cases when a child dies
36 while in the custody of the state for investigation and review by
37 the team. The multidisciplinary investigative team shall meet at
38 regular intervals at least once every calendar month.

39 (c) The investigative team shall be responsible for
40 coordinating or cooperating in the initial and ongoing
41 investigation of all civil and criminal allegations pertinent to
42 cases involving child sexual assault, child sexual abuse, child
43 abuse and neglect and shall make a recommendation to the
44 county prosecuting attorney as to the initiation or
45 commencement of a civil petition and/or criminal prosecution.

46 (d) State, county and local agencies shall provide the
47 multidisciplinary investigative team with any information
48 requested in writing by the team as allowable by law or upon

49 receipt of a certified copy of the circuit court's order directing
50 the agencies to release information in its possession relating to
51 the child. The team shall assure that all information received and
52 developed in connection with this article remains confidential.
53 For purposes of this section, the term "confidential" shall be
54 construed in accordance with article five of this chapter.

**§49-4-403. Multidisciplinary treatment planning process;
coordination; access to information.**

1 (a)(1) A multidisciplinary treatment planning process for
2 cases initiated pursuant to part six and part seven of article four,
3 shall be established within each county of the state, either
4 separately or in conjunction with a contiguous county, by the
5 secretary of the department with advice and assistance from the
6 prosecutor's advisory council as set forth in section four, article
7 four, chapter seven of this code. The Division of Juvenile
8 Services shall establish a similar treatment planning process for
9 delinquency cases in which the juvenile has been committed to
10 its custody, including those cases in which the juvenile has been
11 committed for examination and diagnosis.

12 (2) This section does not require a multidisciplinary team
13 meeting to be held prior to temporarily placing a child or
14 juvenile out-of-home under exigent circumstances or upon a
15 court order placing a juvenile in a facility operated by the
16 Division of Juvenile Services.

17 (b) The case manager in the Department of Health and
18 Human Resources for the child, family or juvenile or the case
19 manager in the Division of Juvenile Services for a juvenile shall
20 convene a treatment team in each case when it is required
21 pursuant to this article.

22 (1) Prior to disposition, in each case in which a treatment
23 planning team has been convened, the team shall advise the court
24 as to the types of services the team has determined are needed
25 and the type of placement, if any, which will best serve the needs
26 of the child. If the team determines that an out-of-home
27 placement will best serve the needs of the child, the team shall
28 first consider placement with appropriate relatives then with
29 foster care homes, facilities or programs located within the state.
30 The team may only recommend placement in an out-of-state
31 facility if it concludes, after considering the best interests and

32 overall needs of the child, that there are no available and suitable
33 in-state facilities which can satisfactorily meet the specific needs
34 of the child.

35 (2) Any person authorized by this chapter to convene a
36 multidisciplinary team meeting may seek and receive an order of
37 the circuit court setting the meeting and directing attendance.
38 Members of the multidisciplinary team may participate in team
39 meetings by telephone or video conferencing. This subsection
40 does not prevent the respective agencies from designating a
41 person other than the case manager as a facilitator for treatment
42 team meetings. Written notice shall be provided to all team
43 members of the availability to participate by videoconferencing.

44 (c) The treatment team shall coordinate its activities and
45 membership with local family resource networks and coordinate
46 with other local and regional child and family service planning
47 committees to assure the efficient planning and delivery of child
48 and family services on a local and regional level.

49 (d) The multidisciplinary treatment team shall be afforded
50 access to information in the possession of the Department of
51 Health and Human Resources, Division of Juvenile Services,

52 law-enforcement agencies and other state, county and local
53 agencies. Those agencies shall cooperate in the sharing of
54 information, as may be provided in article five or this chapter or
55 any other relevant provision of law. Any multidisciplinary team
56 member who acquires confidential information may not disclose
57 the information except as permitted by this code or court rules.

§49-4-404. Court review of service plan; hearing; required findings; order; team member's objections.

1 (a) In any case in which a multidisciplinary treatment team
2 develops an individualized service plan for a child or family
3 pursuant to this article, the court shall review the proposed
4 service plan to determine if implementation of the plan is in the
5 child's best interests. If the multidisciplinary team cannot agree
6 on a plan or if the court determines not to adopt the team's
7 recommendations, it shall, upon motion or *sua sponte*, schedule
8 and hold within ten days of the determination, and prior to the
9 entry of an order placing the child in the custody of the
10 department or in an out-of-home setting, a hearing to consider
11 evidence from the team as to its rationale for the proposed
12 service plan. If, after a hearing held pursuant to this section, the
13 court does not adopt the teams's recommended service plan, it

14 shall make specific written findings as to why the team's
15 recommended service plan was not adopted.

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

20 (c) Any member of the multidisciplinary treatment team who
21 disagrees with recommendations of the team may inform the
22 court of his or her own recommendations and objections to the
23 team's recommendations. The recommendations and objections
24 of the dissenting team member may be made in a hearing on the
25 record, made in writing and served upon each team member and
26 filed with the court and indicated in the case plan, or both made
27 in writing and indicated in the case plan. Upon receiving
28 objections, the court will conduct a hearing pursuant to
29 paragraph (a) of this section.

**§49-4-405. Multidisciplinary treatment planning process involving
child abuse and neglect; team membership; duties;
reports; admissions.**

1 (a) Within thirty days of the initiation of a judicial
2 proceeding pursuant to part six, of this article, the Department of

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

10 (b) In a case initiated pursuant to part six of this article, the
11 treatment team consists of:

12 (1) The child or family's case manager in the Department of
13 Health and Human Resources;

14 (2) The adult respondent or respondents;

15 (3) The child's parent or parents, guardians, any
16 copetitioners, custodial relatives of the child, foster or
17 preadoptive parents;

18 (4) Any attorney representing an adult respondent or other
19 member of the treatment team;

20 (5) The child's counsel or the guardian ad litem;

21 (6) The prosecuting attorney or his or her designee;

22 (7) A member of a child advocacy center when the child has
23 been processed through the child advocacy center program or
24 programs or it is otherwise appropriate that a member of the
25 child advocacy center participate;

26 (8) Any court-appointed special advocate assigned to a case;

27 (9) Any other person entitled to notice and the right to be
28 heard;

29 (10) An appropriate school official; and

30 (11) Any other person or agency representative who may
31 assist in providing recommendations for the particular needs of
32 the child and family, including domestic violence service
33 providers.

34 The child may participate in multidisciplinary treatment
35 team meetings if the child's participation is deemed appropriate
36 by the multidisciplinary treatment team. Unless otherwise
37 ordered by the court, a party whose parental rights have been
38 terminated and his or her attorney may not be given notice of a
39 multidisciplinary treatment team meeting and does not have the
40 right to participate in any treatment team meeting.

41 (c) Prior to disposition in each case which a treatment
42 planning team has been convened, the team shall advise the court
43 as to the types of services the team has determined are needed
44 and the type of placement, if any, which will best serve the needs
45 of the child. If the team determines that an out-of-home
46 placement will best serve the needs of the child, the team shall
47 first consider placement with appropriate relatives then with
48 foster care homes, facilities or programs located within the state.
49 The team may only recommend placement in an out-of-state
50 facility if it concludes, after considering the best interests and
51 overall needs of the child, that there are no available and suitable
52 in-state facilities which can satisfactorily meet the specific needs
53 of the child.

54 (d) The multidisciplinary treatment team shall submit written
55 reports to the court as required by the rules governing this type
56 of proceeding or by the court, and shall meet as often as deemed
57 necessary but at least every three months until the case is
58 dismissed from the docket of the court. The multidisciplinary
59 treatment team shall be available for status conferences and
60 hearings as required by the court.

61 (e) If a respondent or copetitioner admits the underlying
62 allegations of child abuse or neglect, or both abuse and neglect,
63 in the multidisciplinary treatment planning process, his or her
64 statements may not be used in any subsequent criminal
65 proceeding against him or her, except for perjury or false
66 swearing.

§49-4-406. Multidisciplinary treatment process for juvenile status offenders and delinquents; requirements; custody; procedure; reports; cooperation; inadmissibility of certain statements.

1 (a) When a juvenile is adjudicated as a status offender
2 pursuant to section seven hundred eleven, of this article, the
3 Department of Health and Human Resources shall promptly
4 convene a multidisciplinary treatment team and conduct an
5 assessment, utilizing a standard uniform comprehensive
6 assessment instrument or protocol, to determine the juvenile's
7 mental and physical condition, maturity and education level,
8 home and family environment, rehabilitative needs and
9 recommended service plan, which shall be provided in writing
10 to the court and team members. Upon completion of the

11 assessment, the treatment team shall prepare and implement a
12 comprehensive, individualized service plan for the juvenile.

13 (b) When a juvenile is adjudicated as a delinquent or has
14 been granted a preadjudicatory community supervision period
15 pursuant to section seven hundred eight of this article, the court,
16 either upon its own motion or motion of a party, may require the
17 Department of Health and Human Resources to convene a
18 multidisciplinary treatment team and conduct an assessment,
19 utilizing a standard uniform comprehensive assessment
20 instrument or protocol, to determine the juvenile's mental and
21 physical condition, maturity and education level, home and
22 family environment, rehabilitative needs and recommended
23 service plan, which shall be provided in writing to the court and
24 team members. A referral to the Department of Health and
25 Human Resources to convene a multidisciplinary treatment team
26 and to conduct an assessment shall be made when the court is
27 considering placing the juvenile in the department's custody or
28 placing the juvenile out-of-home at the department's expense
29 pursuant to section seven hundred fourteen, of this article. In any

30 delinquency proceeding in which the court requires the
31 Department of Health and Human Resources to convene a
32 multidisciplinary treatment team, the probation officer shall
33 notify the department at least fifteen working days before the
34 court proceeding in order to allow the department sufficient time
35 to convene and develop an individualized service plan for the
36 juvenile.

37 (c) When a juvenile has been adjudicated and committed to
38 the custody of the Director of the Division of Juvenile Services,
39 including those cases in which the juvenile has been committed
40 for examination and diagnosis, the Division of Juvenile Services
41 shall promptly convene a multidisciplinary treatment team and
42 conduct an assessment, utilizing a standard uniform
43 comprehensive assessment instrument or protocol, to determine
44 the juvenile's mental and physical condition, maturity and
45 education level, home and family environment, rehabilitative
46 needs and recommended service plan. Upon completion of the
47 assessment, the treatment team shall prepare and implement a
48 comprehensive, individualized service plan for the juvenile,

49 which will be provided in writing to the court and team
50 members. In cases where the juvenile is committed as a
51 post-sentence disposition to the custody of the Division of
52 Juvenile Services, the plan shall be reviewed quarterly by the
53 multidisciplinary treatment team. Where a juvenile has been
54 detained in a facility operated by the Division of Juvenile
55 Services without an active service plan for more than sixty days,
56 the director of the facility may call a multidisciplinary team
57 meeting to review the case and discuss the status of the service
58 plan.

59 (d)(1) The rules of juvenile procedure govern the procedure
60 for obtaining an assessment of a juvenile, preparing an
61 individualized service plan and submitting the plan and
62 assessment to the court.

63 (2) In juvenile proceedings conducted pursuant to part seven
64 of this article, the treatment team consists of:

65 (A) The juvenile;

66 (B) The juvenile's case manager in the Department of Health
67 and Human Resources or the Division of Juvenile Services;

68 (C) The juvenile's parent or parents, guardian or guardians
69 or custodial relatives;

70 (D) The juvenile's attorney;

71 (E) Any attorney representing a member of the treatment
72 team;

73 (F) The prosecuting attorney or his or her designee;

74 (G) An appropriate school official; and

75 (H) Any other person or agency representative who may
76 assist in providing recommendations for the particular needs of

77 the juvenile and family, including domestic violence service
78 providers. In delinquency proceedings, the probation officer

79 shall be a member of a treatment team. When appropriate, the
80 juvenile case manager in the Department of Health and Human

81 Resources and the Division of Juvenile Services shall cooperate
82 in conducting multidisciplinary treatment team meetings when

83 it is in the juvenile's best interest.

84 (3) Prior to disposition, in each case in which a treatment
85 planning team has been convened, the team shall advise the court

86 as to the types of services the team has determined are needed

87 and type of placement, if any, which will best serve the needs of
88 the child. If the team determines that an out-of-home placement
89 will best serve the needs of the child, the team shall first
90 consider placement at facilities or programs located within the
91 state. The team may only recommend placement in an
92 out-of-state facility if it concludes, after considering the best
93 interests and overall needs of the child, that there are no
94 available and suitable in-state facilities which can satisfactorily
95 meet the specific needs of the child.

96 (4) The multidisciplinary treatment team shall submit written
97 reports to the court as required by applicable law or by the court,
98 shall meet with the court at least every three months, as long as
99 the juvenile remains in the legal or physical custody of the state,
100 and shall be available for status conferences and hearings as
101 required by the court.

102 (5) In any case in which a juvenile has been placed out of his
103 or her home except for a temporary placement in a shelter or
104 detention center, the multidisciplinary treatment team shall
105 cooperate with the state agency in whose custody the juvenile is

106 placed to develop an after-care plan. The rules of juvenile
107 procedure and section four hundred nine of this article govern
108 the development of an after-care plan for a juvenile, the
109 submission of the plan to the court and any objection to the
110 after-care plan.

111 (6) If a juvenile respondent admits the underlying allegations
112 of the case initiated pursuant to part VII of this article, in the
113 multidisciplinary treatment planning process, his or her
114 statements may not be used in any juvenile or criminal
115 proceedings against the juvenile, except for perjury or false
116 swearing.

§49-4-407. Team directors; records; case logs.

1 All persons directing any team created pursuant to this
2 article shall maintain records of each meeting indicating the
3 name and position of persons attending each meeting and the
4 number of cases discussed at the meeting, including a
5 designation of whether or not that case was previously discussed
6 by any multidisciplinary team. Further, all investigative teams
7 shall maintain a log of all cases to indicate the number of

8 referrals to that team, whether or not a police report was filed
9 with the prosecuting attorney's office, whether or not a petition
10 was sought pursuant to part six of this article or whether or not
11 a criminal complaint was issued and a case was criminally
12 prosecuted. All treatment teams shall maintain a log of all cases
13 to indicate the basis for failure to review a case for a period in
14 excess of six months.

**§49-4-408. Unified child and family case plans; treatment teams;
programs; agency requirements.**

1 (a) The Department of Health and Human Resources shall
2 develop a unified child and family case plan for every family
3 wherein a person has been referred to the department after being
4 allowed an improvement period or where the child is placed in
5 foster care. The case plan must be filed within sixty days of the
6 child coming into foster care or within thirty days of the
7 inception of the improvement period, whichever occurs first. The
8 department may also prepare a case plan for any person who
9 voluntarily seeks child abuse and neglect services from the
10 department, or who is referred to the department by another
11 public agency or private organization. The case plan provisions

12 shall comply with federal law and the rules of procedure for
13 child abuse and neglect proceedings.

14 (b) The department shall convene a multidisciplinary
15 treatment team, which shall develop the case plan. Parents,
16 guardians or custodians shall participate fully in the development
17 of the case plan, and the child shall also fully participate if
18 sufficiently mature and the child's participation is otherwise
19 appropriate. The case plan may be modified from time to time to
20 allow for flexibility in goal development, and in each case the
21 modifications shall be submitted to the court in writing.
22 Reasonable efforts to place a child for adoption or with a legal
23 guardian may be made at the same time as reasonable efforts are
24 being made to prevent removal or to make it possible for a child
25 to return safely home. The court shall examine the proposed case
26 plan or any modification thereof, and upon a finding by the court
27 that the plan or modified plan can be easily communicated,
28 explained and discussed so as to make the participants
29 accountable and able to understand the reasons for any success
30 or failure under the plan, the court shall inform the participants
31 of the probable action of the court if goals are met or not met.

32 (c) In furtherance of the provisions of this article, the
33 department shall, within the limits of available funds, establish
34 programs and services for the following purposes:

35 (1) For the development and establishment of training
36 programs for professional and paraprofessional personnel in the
37 fields of medicine, law, education, social work and other
38 relevant fields who are engaged in, or intend to work in, the field
39 of the prevention, identification and treatment of child abuse and
40 neglect; and training programs for children, and for persons
41 responsible for the welfare of children, in methods of protecting
42 children from child abuse and neglect;

43 (2) For the establishment and maintenance of centers,
44 servicing defined geographic areas, staffed by multidisciplinary
45 teams and community teams of personnel trained in the
46 prevention, identification and treatment of child abuse and
47 neglect cases, to provide a broad range of services related to
48 child abuse and neglect, including direct support as well as
49 providing advice and consultation to individuals, agencies and
50 organizations which request the services;

51 (3) For furnishing services of multidisciplinary teams and
52 community teams, trained in the prevention, identification and
53 treatment of child abuse and neglect cases, on a consulting basis
54 to small communities where the services are not available;

55 (4) For other innovative programs and projects that show
56 promise of successfully identifying, preventing or remedying the
57 causes of child abuse and neglect, including, but not limited to,
58 programs and services designed to improve and maintain
59 parenting skills, programs and projects for parent self help, and
60 for prevention and treatment of drug-related child abuse and
61 neglect; and

62 (5) Assisting public agencies or nonprofit private
63 organizations or combinations thereof in making applications for
64 grants from, or in entering into contracts with, the federal
65 Secretary of the Department of Health and Human Services for
66 demonstration programs and projects designed to identify,
67 prevent and treat child abuse and neglect.

68 (d) Agencies, organizations and programs funded to carry
69 out the purposes of this section shall be structured so as to

70 comply with any applicable federal law, any regulation of the
71 federal Department of Health and Human Services or its
72 secretary, and any final comprehensive plan of the federal
73 advisory board on child abuse and neglect. In funding
74 organizations, the department shall, to the extent feasible, ensure
75 that parental organizations combating child abuse and neglect
76 receive preferential treatment.

§49-4-409. After care plans; contents; written comments; contacts; objections; courts.

1 (a) Prior to the discharge of a child from any institution or
2 facility to which the child was committed pursuant to this
3 chapter, the superintendent of the institution or facility shall call
4 a meeting of the multidisciplinary treatment team to which the
5 child has been referred or, if no referral has been made, convene
6 a multidisciplinary treatment team for any child for which a
7 multidisciplinary treatment plan is required by this article and
8 forward a copy of the child's proposed after-care plan to the
9 court which committed the child. A copy of the plan shall also
10 be sent to: (1) The child's parents or legal guardian; (2) the
11 child's lawyer; (3) the child's probation officer or community

12 mental health center professional; (4) the prosecuting attorney of
13 the county in which the original commitment proceedings were
14 held; and (5) the principal of the school which the child will
15 attend. The plan shall have a list of the names and addresses of
16 these persons attached to it.

17 (b) The after-care plan shall contain a detailed description of
18 the education, counseling and treatment which the child received
19 while at the institution or facility and it shall also propose a plan
20 for education, counseling and treatment for the child upon the
21 child's discharge. The plan shall also contain a description of
22 any problems the child has, including the source of those
23 problems, and it shall propose a manner for addressing those
24 problems upon discharge.

25 (c) Within twenty-one days of receiving the plan, the child's
26 probation officer or community mental health center
27 professional shall submit written comments upon the plan to the
28 court which committed the child. Any other person who received
29 a copy of the plan pursuant to subsection (a) of this section may
30 submit written comments upon the plan to the court which

31 committed the child. Any person who submits comments upon
32 the plan shall send a copy of those comments to every other
33 person who received a copy of the plan.

34 (d) Within twenty-one days of receiving the plan, the child's
35 probation officer or community mental health center
36 professional shall contact all persons, organizations and agencies
37 which are to be involved in executing the plan to determine
38 whether they are capable of executing their responsibilities under
39 the plan and to further determine whether they are willing to
40 execute their responsibilities under the plan.

41 (e) If adverse comments or objections regarding the plan are
42 submitted to the circuit court, it shall, within forty-five days of
43 receiving the plan, hold a hearing to consider the plan and the
44 adverse comments or objections. Any person, organization or
45 agency which has responsibilities in executing the plan, or their
46 representatives, may be required to appear at the hearing unless
47 they are excused by the circuit court. Within five days of the
48 hearing, the circuit court shall issue an order which adopts the
49 plan as submitted or as modified in response to any comments or
50 objections.

51 (f) If no adverse comments or objections are submitted, a
52 hearing need not be held. In that case, the court shall consider
53 the plan as submitted and shall, within forty-five days of
54 receiving the plan, issue an order which adopts the plan as
55 submitted.

56 (g) Notwithstanding the provisions of subsections (e) and (f)
57 of this section, the plan which is adopted by the court shall be in
58 the best interests of the child and shall also be in conformity with
59 West Virginia's interest in youths as embodied in this chapter.

60 (h) The court which committed the child shall appoint the
61 child's probation officer or community mental health center
62 professional to act as supervisor of the plan. The supervisor shall
63 report the child's progress under the plan to the court every sixty
64 days or until the court determines that no report or no further
65 care is necessary.

§49-4-410. Other agencies of government required to cooperate.

1 State, county and local agencies shall provide the
2 multidisciplinary teams with any information requested in
3 writing by the team as allowable by law or upon receipt of a

4 certified copy of the circuit court's order directing the agencies
5 to release information in its possession relating to the child. The
6 team shall assure that all information received and developed in
7 connection with this article remain confidential. For purposes of
8 this section, the term "confidential" shall be construed in
9 accordance with article five of this chapter.

§49-4-411. Law enforcement; prosecution; interference with performance of duties.

1 No multidisciplinary team may take any action which, in the
2 determination of the prosecuting attorney or his or her assistant,
3 impairs the ability of the prosecuting attorney, his or her
4 assistant, or any law-enforcement officer to perform his or her
5 statutory duties.

§49-4-412. Exemption from multidisciplinary team review before emergency out-of-home placements.

1 Notwithstanding any provision of this article to the contrary,
2 a multidisciplinary team meeting may not be required before
3 temporary out-of-home placement of a child in an emergency
4 circumstance or for purposes of assessment as provided by this
5 article. As soon a practicable after the emergency circumstance,

6 the mutidisciplinary treatment team shall convene to explore
7 placement options.

PART V. DUTIES OF THE PROSECUTING ATTORNEY.

**§49-4-501. Prosecuting attorney representation of the Department
of Health and Human Resources; conflict resolution.**

1 (a) The prosecuting attorney shall render to the Department
2 of Health and Human Resources, without additional
3 compensation, the legal services as the department may require.
4 This section shall not be construed to prohibit the department
5 from developing plans for cooperation with courts, prosecuting
6 attorneys, and other law-enforcement officials in a manner as to
7 permit the state and its citizens to obtain maximum fiscal
8 benefits under federal laws, rules and regulations.

9 (b) Nothing in this code may be construed to limit the
10 authority of a prosecuting attorney to file an abuse or neglect
11 petition, including the duties and responsibilities owed to its
12 client the Department of Health and Human Resources, in his or
13 her fulfillment of the provisions of this article.

14 (c) Whenever, pursuant to this chapter, a prosecuting
15 attorney acts as counsel for the Department of Health and

16 Human Resources, and a dispute arises between the prosecuting
17 attorney and the department's representative because an action
18 proposed by the other is believed to place the child at imminent
19 risk of abuse or serious neglect, either the prosecuting attorney
20 or the department's representative may contact the secretary of
21 the department and the executive director of the West Virginia
22 Prosecuting Attorneys Institute for prompt mediation and
23 resolution. The secretary may designate either his or her general
24 counsel or the director of social services to act as his or her
25 designee and the executive director may designate an objective
26 prosecuting attorney as his or her designee.

§49-4-502. Prosecuting attorney to represent and cooperate with persons other than the department in child abuse and neglect matters; duties.

1 It is the duty of every prosecuting attorney to fully and
2 promptly cooperate with persons seeking to apply for relief,
3 including co-petitioners with the department, under this article
4 in all cases of suspected child abuse and neglect; to promptly
5 prepare applications and petitions for relief requested by those
6 persons, to investigate reported cases of suspected child abuse

7 and neglect for possible criminal activity; and to report at least
8 annually to the grand jury regarding the discharge of his or her
9 duties with respect thereto.

§49-4-503. Prosecuting attorney to represent petitioner in juvenile cases.

1 The prosecuting attorney shall represent the petitioner in all
2 proceedings under this article before the court judge or
3 magistrate having juvenile jurisdiction.

§49-4-504. Prosecuting attorney duty to establish multidisciplinary investigative teams.

1 The prosecuting attorney of each county shall establish a
2 multidisciplinary investigative team in that county, pursuant to
3 section four hundred two of this article, and section five, article
4 four of chapter seven.

PART VI. PROCEDURES IN CASES OF CHILD

NEGLECT OR ABUSE.

§49-4-601. Petition to court when child believed neglected or abused; venue; notice; right to counsel; continuing legal education; findings; proceedings; procedure.

1 (a) *Petitioner and venue.* — If the department or a reputable
2 person believes that a child is neglected or abused, the

3 department or the person may present a petition setting forth the
4 facts to the circuit court in the county in which the child resides,
5 or if the petition is being brought by the department, in the
6 county in which the custodial respondent or other named party
7 abuser resides, or in which the abuse or neglect occurred, or to
8 the judge of the court in vacation. Under no circumstance may
9 a party file a petition in more than one county based on the same
10 set of facts.

11 (b) *Contents of Petition.* — The petition shall be verified by
12 the oath of some credible person having knowledge of the facts.
13 The petition shall allege specific conduct including time and
14 place, how the conduct comes within the statutory definition of
15 neglect or abuse with references thereto, any supportive services
16 provided by the department to remedy the alleged circumstances
17 and the relief sought.

18 (c) *Court action upon filing of petition.* — Upon filing of the
19 petition, the court shall set a time and place for a hearing and
20 shall appoint counsel for the child. When there is an order for
21 temporary custody pursuant to this article, the preliminary

22 hearing shall be held within ten days of the order continuing or
23 transferring custody, unless a continuance for a reasonable time
24 is granted to a date certain, for good cause shown.

25 (d) Department action upon filing of the petition. — At the
26 time of the institution of any proceeding under this article, the
27 department shall provide supportive services in an effort to
28 remedy circumstances detrimental to a child.

29 (e) Notice of hearing. —

30 (1) The petition and notice of the hearing shall be served
31 upon both parents and any other custodian, giving to the parents
32 or custodian at least five days' actual notice of a preliminary
33 hearing and at least ten days' notice of any other hearing.

34 (2) Notice shall be given to the department, any foster or
35 preadoptive parent, and any relative providing care for the child.

36 (3) In cases where personal service within West Virginia
37 cannot be obtained after due diligence upon any parent or other
38 custodian, a copy of the petition and notice of the hearing shall
39 be mailed to the person by certified mail, addressee only, return
40 receipt requested, to the last known address of the person. If the

41 person signs the certificate, service shall be complete and the
42 certificate shall be filed as proof of the service with the clerk of
43 the circuit court.

44 (4) If service cannot be obtained by personal service or by
45 certified mail, notice shall be by publication as a Class II legal
46 advertisement in compliance with article three, chapter fifty-nine
47 of this code.

48 (5) A notice of hearing shall specify the time and place of
49 the hearing, the right to counsel of the child and parents or other
50 custodians at every stage of the proceedings and the fact that the
51 proceedings can result in the permanent termination of the
52 parental rights.

53 (6) Failure to object to defects in the petition and notice may
54 not be construed as a waiver.

55 (f) Right to counsel. —

56 (1) In any proceeding under this article, the child, his or her
57 parents and his or her legally established custodian or other
58 persons standing in *loco parentis* to him or her has the right to be
59 represented by counsel at every stage of the proceedings and

60 shall be informed by the court of their right to be so represented
61 and that if they cannot pay for the services of counsel, that
62 counsel will be appointed.

63 (2) Counsel shall be appointed in the initial order. For
64 parents, legal guardians, and other persons standing in *loco*
65 *parentis*, the representation may only continue after the first
66 appearance if the parent or other persons standing in *loco*
67 *parentis* cannot pay for the services of counsel.

68 (3) Counsel for other parties shall only be appointed upon
69 request for appointment of counsel. If the requesting parties have
70 not retained counsel and cannot pay for the services of counsel,
71 the court shall, by order entered of record, appoint an attorney or
72 attorneys to represent the other party or parties and so inform the
73 parties.

74 (4) Under no circumstances may the same attorney represent
75 both the child and the other party or parties, nor may the same
76 attorney represent both parents or custodians. However, one
77 attorney may represent both parents or custodians where both
78 parents or guardians consent to this representation after the

79 attorney fully discloses to the client the possible conflict and
80 where the attorney assures the court that she or he is able to
81 represent each client without impairing her or his professional
82 judgment; however, if more than one child from a family is
83 involved in the proceeding, one attorney may represent all the
84 children.

85 (5) A parent who is a copetitioner is entitled to his or her
86 own attorney. The court may allow to each attorney so appointed
87 a fee in the same amount which appointed counsel can receive in
88 felony cases.

89 (g) Continuing education for counsel. — Any attorney
90 representing a party under this article shall receive a minimum
91 of eight hours of continuing legal education training per
92 reporting period on child abuse and neglect procedure and
93 practice. In addition to this requirement, any attorney appointed
94 to represent a child must first complete training on
95 representation of children that is approved by the administrative
96 office of the Supreme Court of Appeals. The Supreme Court of
97 Appeals shall develop procedures for approval and certification

108 of training required under this section. Where no attorney has
109 completed the training required by this subsection, the court
110 shall appoint a competent attorney with demonstrated knowledge
111 of child welfare law to represent the parent or child. Any
112 attorney appointed pursuant to this section shall perform all
113 duties required of an attorney licensed to practice law in the
114 State of West Virginia.

115 (h) *Right to be heard.* — In any proceeding pursuant to this
116 article, the party or parties having custodial or other parental
117 rights or responsibilities to the child shall be afforded a
118 meaningful opportunity to be heard, including the opportunity to
119 testify and to present and cross-examine witnesses. Foster
120 parents, preadoptive parents, and relative caregivers shall also
121 have a meaningful opportunity to be heard.

122 (i) *Findings of the court.* — Where relevant, the court shall
123 consider the efforts of the department to remedy the alleged
124 circumstances. At the conclusion of the adjudicatory hearing, the
125 court shall make a determination based upon the evidence and
126 shall make findings of fact and conclusions of law as to whether

117 the child is abused or neglected and-whether the respondent is
118 abusing, neglecting, or, if applicable, a battered parent, all of
119 which shall be incorporated into the order of the court. The
120 findings must be based upon conditions existing at the time of
121 the filing of the petition and proven by clear and convincing
122 evidence.

123 (j) *Priority of proceedings.* — Any petition filed and any
124 proceeding held under this article shall, to the extent practicable,
125 be given priority over any other civil action before the court,
126 except proceedings under section three hundred nine, article
127 twenty-seven, chapter forty-eight of this code and actions in
128 which trial is in progress. Any petition filed under this article
129 shall be docketed immediately upon filing. Any hearing to be
130 held at the end of an improvement period and any other hearing
131 to be held during any proceedings under this article shall be held
132 as nearly as practicable on successive days and, with respect to
133 the hearing to be held at the end of an improvement period, shall
134 be held as close in time as possible after the end of the
135 improvement period and shall be held within thirty days of the
136 termination of the improvement period.

137 (k) Procedural safeguards. — The petition may not be taken
138 as confessed. A transcript or recording shall be made of all
139 proceedings unless waived by all parties to the proceeding. The
140 rules of evidence shall apply. Following the court’s
141 determination, it shall be inquired of the parents or custodians
142 whether or not appeal is desired and the response transcribed. A
143 negative response may not be construed as a waiver. The
144 evidence shall be transcribed and made available to the parties
145 or their counsel as soon as practicable, if the same is required for
146 purposes of further proceedings. If an indigent person intends to
147 pursue further proceedings, the court reporter shall furnish a
148 transcript of the hearing without cost to the indigent person if an
149 affidavit is filed stating that he or she cannot pay therefor.

**§49-4-602. Petition to court when child believed neglected or
abused; temporary care, custody, and control of
child at different stages of proceeding; temporary
care; orders; emergency removal; when reasonable
efforts to preserve family are unnecessary.**

1 (a) (1) Temporary care, custody, and control upon filing of
2 the petition. — Upon the filing of a petition, the court may order
3 that the child alleged to be an abused or neglected child be

4 delivered for not more than ten days into the care, custody, and
5 control of the department or a responsible person who is not the
6 custodial parent or guardian of the child, if it finds that:

7 (A) There exists imminent danger to the physical well-being
8 of the child; and

9 (B) There are no reasonably available alternatives to removal
10 of the child, including, but not limited to, the provision of
11 medical, psychiatric, psychological or homemaking services in
12 the child's present custody.

13 (2) Where the alleged abusing person, if known, is a member
14 of a household, the court shall not allow placement pursuant to
15 this section of the child or children in the home unless the
16 alleged abusing person is or has been precluded from visiting or
17 residing in the home by judicial order.

18 (3) In a case where there is more than one child in the home,
19 or in the temporary care, custody or control of the alleged
20 offending parent, the petition shall so state. Notwithstanding the
21 fact that the allegations of abuse or neglect may pertain to less
22 than all of those children, each child in the home for whom relief

23 is sought shall be made a party to the proceeding. Even though
24 the acts of abuse or neglect alleged in the petition were not
25 directed against a specific child who is named in the petition, the
26 court shall order the removal of the child, pending final
27 disposition, if it finds that there exists imminent danger to the
28 physical well-being of the child and a lack of reasonable
29 available alternatives to removal.

30 (4) The initial order directing custody shall contain an order
31 appointing counsel and scheduling the preliminary hearing, and
32 upon its service shall require the immediate transfer of care,
33 custody, and control of the child or children to the department or
34 a responsible relative, which may include any parent, guardian,
35 or other custodian. The court order shall state:

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

38 (B) Whether or not the department made reasonable efforts
39 to preserve the family and prevent the placement or that the
40 emergency situation made those efforts unreasonable or
41 impossible. The order may also direct any party or the

42 department to initiate or become involved in services to facilitate
43 reunification of the family.

44 (b) Temporary care, custody and control at preliminary
45 hearing. — Whether or not the court orders immediate transfer
46 of custody as provided in subsection (a) of this section, if the
47 facts alleged in the petition demonstrate to the court that there
48 exists imminent danger to the child, the court may schedule a
49 preliminary hearing giving the respondents at least five days'
50 actual notice. If the court finds at the preliminary hearing that
51 there are no alternatives less drastic than removal of the child
52 and that a hearing on the petition cannot be scheduled in the
53 interim period, the court may order that the child be delivered
54 into the temporary care, custody, and control of the department
55 or a responsible person or agency found by the court to be a fit
56 and proper person for the temporary care of the child for a period
57 not exceeding sixty days. The court order shall state:

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

60 (2) Whether or not the department made reasonable efforts
61 to preserve the family and to prevent the child's removal from
62 his or her home;

63 (3) Whether or not the department made reasonable efforts
64 to preserve the family and to prevent the placement or that the
65 emergency situation made those efforts unreasonable or
66 impossible;

67 (4) Whether or not the department made reasonable
68 accommodations in accordance with the Americans with
69 Disabilities Act of 1990, 42 U.S.C. §12101, et seq., to parents
70 with disabilities in order to allow them meaningful access to
71 reunification and family preservation services; and

72 (5) What efforts should be made by the department, if any,
73 to facilitate the child's return home. If the court grants an
74 improvement period as provided in section six hundred ten of
75 this article, the sixty-day limit upon temporary custody is
76 waived.

77 (c) Emergency removal by department during pendency of
78 case. — Regardless of whether the court has previously granted

79 the department care and custody of a child, if the department
80 takes physical custody of a child during the pendency of a child
81 abuse and neglect case (also known as removing the child) due
82 to a change in circumstances and without a court order issued at
83 the time of the removal, the department must immediately notify
84 the court and a hearing shall take place within ten days to
85 determine if there is imminent danger to the physical well-being
86 of the child, and there is no reasonably available alternative to
87 removal of the child. The court findings and order shall be
88 consistent with subsections (a) and (b) of this section.

89 *(d) Situations when reasonable efforts to preserve the family*
90 *are not required.* — For purposes of the court’s consideration of
91 temporary custody pursuant to subsection (a), (b), or (c) of this
92 section, the department is not required to make reasonable
93 efforts to preserve the family if the court determines:

94 (1) The parent has subjected the child, another child of the
95 parent or any other child residing in the same household or under
96 the temporary or permanent custody of the parent to aggravated
97 circumstances which include, but are not limited to,
98 abandonment, torture, chronic abuse and sexual abuse;

99 (2) The parent has:

100 (A) Committed murder of the child's other parent, guardian
101 or custodian, another child of the parent or any other child
102 residing in the same household or under the temporary or
103 permanent custody of the parent;

104 (B) Committed voluntary manslaughter of the child's other
105 parent, guardian or custodian, another child of the parent or any
106 other child residing in the same household or under the
107 temporary or permanent custody of the parent;

108 (C) Attempted or conspired to commit murder or voluntary
109 manslaughter or been an accessory before or after the fact to
110 either crime;

111 (D) Committed unlawful or malicious wounding that results
112 in serious bodily injury to the child, the child's other parent,
113 guardian or custodian, to another child of the parent or any other
114 child residing in the same household or under the temporary or
115 permanent custody of the parent;

116 (E) Committed sexual assault or sexual abuse of the child,
117 the child's other parent, guardian or custodian, another child of

118 the parent or any other child residing in the same household or

119 under the temporary or permanent custody of the parent; or

120 (F) Has been required by state or federal law to register with

121 a sex offender registry, and the court has determined in

122 consideration of the nature and circumstances surrounding the

123 prior charges against that parent, that the child's interests would

124 not be promoted by a preservation of the family; or

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

126 been terminated involuntarily.

**§49-4-603. Medical and mental examinations; limitation of
evidence; probable cause; testimony; judge or
referee.**

1 (a)(1) At any time during proceedings under this article the

2 court may, upon its own motion or upon motion of the child or

3 other parties, order the child or other parties to be examined by

4 a physician, psychologist or psychiatrist, and may require

5 testimony from the expert, subject to cross-examination and the

6 rules of evidence.

7 (2) The court may not terminate parental or custodial rights

8 of a party solely because the party refuses to submit to the

9 examination, nor may the court hold a party in contempt for
10 refusing to submit to an examination.

11 (3) The physician, psychologist or psychiatrist shall be
12 allowed to testify as to the conclusions reached from hospital,
13 medical, psychological or laboratory records provided the same
14 are produced at the hearing.

15 (4) If the child, parent or custodian is indigent, the witnesses
16 shall be compensated out of the Treasury of the State, upon
17 certificate of the court wherein the case is pending.

18 (5) No evidence acquired as a result of an examination of the
19 parent or any other person having custody of the child may be
20 used against the person in any subsequent criminal proceedings
21 against the person.

22 (b) (1) If a person with authority to file a petition under this
23 article shall have probable cause to believe that evidence exists
24 that a child has been abused or neglected and that the evidence
25 may be found by a medical examination, the person may apply
26 to a judge or juvenile referee for an order to take the child into
27 custody for delivery to a physician or hospital for examination.

28 (2) The application may be on forms prescribed by the
29 Supreme Court of Appeals or prepared by the prosecuting
30 attorney or the applicant, and shall set forth facts from which it
31 may be determined that probable cause exists for the belief.

32 (3) Upon sworn testimony or other evidence as the judge or
33 referee deems sufficient, the judge or referee may order any
34 law-enforcement officer to take the child into custody and
35 deliver the child to a physician or hospital for examination.

36 (4) If a referee issues an order the referee shall by telephonic
37 communication have such order orally confirmed by a circuit
38 judge of the circuit or an adjoining circuit who shall, on the next
39 judicial day, enter an order of confirmation.

40 (5) Any child protection worker and the child's parents,
41 guardians or custodians may accompany the officer for
42 examination.

43 (6) After the examination the officer may return the child to
44 the custody of his or her parent, guardian or custodian, retain
45 custody of the child or deliver custody to the state department
46 until the end of the next judicial day, at which time the child

47 shall be returned to the custody of his or her parent, guardian or
48 custodian unless a petition has been filed and custody of the
49 child has been transferred to the department under section six
50 hundred two of this article.

§49-4-604. Disposition of neglected or abused children; case plans; dispositions; factors to be considered; reunification; orders; alternative dispositions.

1 (a) *Child and family case plans.* — Following a
2 determination pursuant to section six hundred two of this article
3 wherein the court finds a child to be abused or neglected, the
4 department shall file with the court a copy of the child's case
5 plan, including the permanency plan for the child. The term
6 "case plan" means a written document that includes, where
7 applicable, the requirements of the family case plan as provided
8 in section four hundred eight of this article and that also
9 includes, at a minimum, the following:

10 (1) A description of the type of home or institution in which
11 the child is to be placed, including a discussion of the
12 appropriateness of the placement and how the agency which is
13 responsible for the child plans to assure that the child receives

14 proper care and that services are provided to the parents, child,
15 and foster parents in order to improve the conditions that made
16 the child unsafe in the care of his or her parent(s), including any
17 reasonable accommodations in accordance with the Americans
18 with Disabilities Act of 1990, 42 U.S.C. §12101 et seq., to
19 parents with disabilities in order to allow them meaningful
20 access to reunification and family preservation services;

21 (2) A plan to facilitate the return of the child to his or her
22 own home or the concurrent permanent placement of the child;
23 and address the needs of the child while in relative or foster care,
24 including a discussion of the appropriateness of the services that
25 have been provided to the child.

26 The term "permanency plan" refers to that part of the case
27 plan which is designed to achieve a permanent home for the
28 child in the least restrictive setting available. The plan must
29 document efforts to ensure that the child is returned home within
30 approximate time lines for reunification as set out in the plan.
31 Reasonable efforts to place a child for adoption or with a legal
32 guardian should be made at the same time, or concurrent with,

33 reasonable efforts to prevent removal or to make it possible for
34 a child to return to the care of his or her parent(s) safely. If
35 reunification is not the permanency plan for the child, the plan
36 must state why reunification is not appropriate and detail the
37 alternative, concurrent permanent placement plans for the child
38 to include approximate time lines for when the placement is
39 expected to become a permanent placement. This case plan shall
40 serve as the family case plan for parents of abused or neglected
41 children. Copies of the child's case plan shall be sent to the
42 child's attorney and parent, guardian or custodian or their
43 counsel at least five days prior to the dispositional hearing. The
44 court shall forthwith proceed to disposition giving both the
45 petitioner and respondents an opportunity to be heard.

46 (b) *Disposition decisions.* — The court shall give precedence
47 to dispositions in the following sequence:

48 (1) Dismiss the petition;

49 (2) Refer the child, the abusing parent, the battered parent or
50 other family members to a community agency for needed
51 assistance and dismiss the petition;

52 (3) Return the child to his or her own home under
53 supervision of the department;

54 (4) Order terms of supervision calculated to assist the child
55 and any abusing parent or battered parent or parents or custodian
56 which prescribe the manner of supervision and care of the child
57 and which are within the ability of any parent or parents or
58 custodian to perform;

59 (5) Upon a finding that the abusing parent or battered parent
60 or parents are presently unwilling or unable to provide
61 adequately for the child's needs, commit the child temporarily
62 to the care, custody, and control of the state department, a
63 licensed private child welfare agency, or a suitable person who
64 may be appointed guardian by the court. The court order shall
65 state:

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

68 (B) Whether or not the department has made reasonable
69 efforts, with the child's health and safety being the paramount
70 concern, to preserve the family, or some portion thereof, and to

71 prevent or eliminate the need for removing the child from the
72 child's home and to make it possible for the child to safely return
73 home;

74 (C) Whether the department has made reasonable
75 accommodations in accordance with the Americans with
76 Disabilities Act of 1990, 42 U.S.C. §12101 et seq., to parents
77 with disabilities in order to allow them meaningful access to
78 reunification and family preservation services;

79 (D) What efforts were made or that the emergency situation
80 made those efforts unreasonable or impossible; and

81 (E) The specific circumstances of the situation which made
82 those efforts unreasonable if services were not offered by the
83 department. The court order shall also determine under what
84 circumstances the child's commitment to the department are to
85 continue. Considerations pertinent to the determination include
86 whether the child should:

87 (i) Be considered for legal guardianship;

88 (ii) Be considered for permanent placement with a fit and
89 willing relative; or

90 (iii) Be placed in another planned permanent living
91 arrangement, but only in cases where the child has attained 16
92 years of age and the department has documented to the circuit
93 court a compelling reason for determining that it would not be in
94 the best interests of the child to follow one of the options set
95 forth in subparagraphs (i) or (ii) of this paragraph. The court may
96 order services to meet the special needs of the child. Whenever
97 the court transfers custody of a youth to the department, an
98 appropriate order of financial support by the parents or guardians
99 shall be entered in accordance with part eight of this article; and

100 (6) Upon a finding that there is no reasonable likelihood that
101 the conditions of neglect or abuse can be substantially corrected
102 in the near future and, when necessary for the welfare of the
103 child, terminate the parental, custodial and guardianship rights
104 and responsibilities of the abusing parent and commit the child
105 to the permanent sole custody of the nonabusing parent, if there
106 be one, or, if not, to either the permanent guardianship of the
107 department or a licensed child welfare agency. The court may
108 award sole custody of the child to a nonabusing battered parent.

109 If the court shall so find, then in fixing its dispositional order the
110 court shall consider the following factors:

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

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

114 (C) Other factors as the court considers necessary and

115 proper. Notwithstanding any other provision of this article, the

116 court shall give consideration to the wishes of a child fourteen

117 years of age or older or otherwise of an age of discretion as

118 determined by the court regarding the permanent termination of

119 parental rights. No adoption of a child shall take place until all

120 proceedings for termination of parental rights under this article

121 and appeals thereof are final. In determining whether or not

122 parental rights should be terminated, the court shall consider the

123 efforts made by the department to provide remedial and

124 reunification services to the parent. The court order shall state:

125 (i) That continuation in the home is not in the best interest of

126 the child and why;

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

128 (iii) Whether or not the department made reasonable efforts,
129 with the child's health and safety being the paramount concern,
130 to preserve the family, or some portion thereof, and to prevent
131 the placement or to eliminate the need for removing the child
132 from the child's home and to make it possible for the child to
133 safely return home, or that the emergency situation made those
134 efforts unreasonable or impossible; and

135 (iv) Whether or not the department made reasonable efforts
136 to preserve and reunify the family, or some portion thereof,
137 including a description of what efforts were made or that those
138 efforts were unreasonable due to specific circumstances.

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

143 (A) The parent has subjected the child, another child of the
144 parent or any other child residing in the same household or under
145 the temporary or permanent custody of the parent to aggravated
146 circumstances which include, but are not limited to,
147 abandonment, torture, chronic abuse and sexual abuse;

148 (B) The parent has:

149 (i) Committed murder of the child's other parent, guardian
150 or custodian, another child of the parent or any other child
151 residing in the same household or under the temporary or
152 permanent custody of the parent;

153 (ii) Committed voluntary manslaughter of the child's other
154 parent, guardian or custodian, another child of the parent or any
155 other child residing in the same household or under the
156 temporary or permanent custody of the parent;

157 (iii) Attempted or conspired to commit murder or voluntary
158 manslaughter or been an accessory before or after the fact to
159 either crime;

160 (iv) Committed a felonious assault that results in serious
161 bodily injury to the child, the child's other parent, guardian or
162 custodian, to another child of the parent or any other child
163 residing in the same household or under the temporary or
164 permanent custody of the parent; or

165 (v) Committed sexual assault or sexual abuse of the child,
166 the child's other parent, guardian or custodian, another child of

167 the parent or any other child residing in the same household or
168 under the temporary or permanent custody of the parent;

169 (C) The parental rights of the parent to another child have
170 been terminated involuntarily;

171 (D) A parent has been required by state or federal law to
172 register with a sex offender registry, and the court has
173 determined in consideration of the nature and circumstances
174 surrounding the prior charges against that parent, that the child's
175 interests would not be promoted by a preservation of the family.

176 (c) As used in this section, "no reasonable likelihood that
177 conditions of neglect or abuse can be substantially corrected"
178 means that, based upon the evidence before the court, the
179 abusing adult or adults have demonstrated an inadequate
180 capacity to solve the problems of abuse or neglect on their own
181 or with help. Those conditions exist in the following
182 circumstances, which are not exclusive:

183 (1) The abusing parent or parents have habitually abused or
184 are addicted to alcohol, controlled substances or drugs, to the
185 extent that proper parenting skills have been seriously impaired

186 and the person or persons have not responded to or followed
187 through the recommended and appropriate treatment which
188 could have improved the capacity for adequate parental
189 functioning;

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

194 (3) The abusing parent or parents have not responded to or
195 followed through with a reasonable family case plan or other
196 rehabilitative efforts of social, medical, mental health or other
197 rehabilitative agencies designed to reduce or prevent the abuse
198 or neglect of the child, as evidenced by the continuation or
199 insubstantial diminution of conditions which threatened the
200 health, welfare or life of the child;

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

202 (5) The abusing parent or parents have repeatedly or
203 seriously injured the child physically or emotionally, or have
204 sexually abused or sexually exploited the child, and the degree

205 of family stress and the potential for further abuse and neglect
206 are so great as to preclude the use of resources to mitigate or
207 resolve family problems or assist the abusing parent or parents
208 in fulfilling their responsibilities to the child;

209 (6) The battered parent's parenting skills have been seriously
210 impaired and the person has willfully refused or is presently
211 unwilling or unable to cooperate in the development of a
212 reasonable treatment plan or has not adequately responded to or
213 followed through with the recommended and appropriate
214 treatment plan.

215 (d) The court may, as an alternative disposition, allow the
216 parents or custodians an improvement period not to exceed six
217 months. During this period the court shall require the parent to
218 rectify the conditions upon which the determination was based.
219 The court may order the child to be placed with the parents, or
220 any person found to be a fit and proper person, for the temporary
221 care of the child during the period. At the end of the period, the
222 court shall hold a hearing to determine whether the conditions
223 have been adequately improved and at the conclusion of the

224 hearing shall make a further dispositional order in accordance

225 with this section.

**§49-4-605. When department efforts to terminate parental rights
are required.**

1 (a) Except as provided in subsection (b) of this section, the
2 department shall file or join in a petition or otherwise seek a
3 ruling in any pending proceeding to terminate parental rights:

4 (1) If a child has been in foster care for fifteen of the most
5 recent twenty-two months as determined by the earlier of the
6 date of the first judicial finding that the child is subjected to
7 abuse or neglect or the date which is sixty days after the child is
8 removed from the home;

9 (2) If a court has determined the child is abandoned,
10 tortured, sexually abused, or chronically abused; or

11 (3) If a court has determined the parent has committed
12 murder or voluntary manslaughter of another of his or her
13 children, another child in the household, or the other parent of
14 his or her children; has attempted or conspired to commit murder
15 or voluntary manslaughter or has been an accessory before or
16 after the fact of either crime; has committed unlawful or

17 malicious wounding resulting in serious bodily injury to the
18 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
20 parental rights of the parent to another child have been
21 terminated involuntarily.

22 (b) The department may determine not to file a petition to
23 terminate parental rights when:

24 (1) At the option of the department, the child has been
25 placed permanently with a relative by court order;

26 (2) The department has documented in the case plan made
27 available for court review a compelling reason, including, but
28 not limited to, the child's age and preference regarding
29 termination or the child's placement in custody of the
30 department based on any proceedings initiated under part seven
31 of this article, that filing the petition would not be in the best
32 interests of the child; or

33 (3) The department has not provided, when reasonable
34 efforts to return a child to the family are required, the services to
35 the child's family as the department deems necessary for the safe
36 return of the child to the home.

§49-4-606. Modification of dispositional orders; hearings; treatment team; unadopted children.

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

17 (b) If the child is removed or relinquished from an adoptive
18 home or other permanent placement after the case has been

19 dismissed, any party with notice thereof and the receiving
20 agency shall promptly report the matter to the circuit court of
21 origin, the department and the child's counsel, and the court
22 shall schedule a permanency hearing within sixty days of the
23 report to the circuit court, with notice given to any appropriate
24 parties and persons entitled to notice and the right to be heard.
25 The department shall convene a multidisciplinary treatment team
26 meeting within thirty days of the receipt of notice of permanent
27 placement disruption.

28 (c) If a child has not been adopted, the child or department
29 may move the court to place the child with a parent or custodian
30 whose rights have been terminated and/or restore the parent's or
31 guardian's rights. Under these circumstances, the court may
32 order the placement and/or restoration of a parent's or guardian's
33 rights if it finds by clear and convincing evidence a material
34 change of circumstances and that the placement and/or
35 restoration is in the child's best interests.

§49-4-607. Consensual termination of parental rights.

1 An agreement of a natural parent in termination of parental
2 rights are valid if made by a duly acknowledged writing, and

3 entered into under circumstances free from duress and fraud.
4 Where during the pendency of an abuse and neglect proceeding,
5 a parent offers voluntarily relinquish of his or her parental rights,
6 and the relinquishment is accepted by the circuit court, the
7 relinquishment may, without further evidence, be used as the
8 basis of an order of adjudication of abuse and neglect by that
9 parent of his or her children.

**§49-4-608. Permanency hearing; frequency; transitional planning;
out-of-state placements; findings; notice; permanent
placement review.**

1 (a) Permanency hearing when reasonable efforts are not
2 required. — If the court finds, pursuant to this article, that the
3 department is not required to make reasonable efforts to preserve
4 the family, then, notwithstanding any other provision, a
5 permanency hearing must be held within thirty days following
6 the entry of the court order so finding, and a permanent
7 placement review hearing must be conducted at least once every
8 ninety days thereafter until a permanent placement is achieved.
9 (b) Permanency hearing every twelve months until
10 permanency is achieved. — If, twelve months after receipt by the

11 department or its authorized agent of physical care, custody, and
12 control of a child either by a court-ordered placement or by a
13 voluntary agreement, the department has not placed a child in an
14 adoptive home; placed the child with a natural parent, placed the
15 child in legal guardianship, or permanently placed the child with
16 a fit and willing relative, the court shall hold a permanency
17 hearing. The department shall file a progress report with the
18 court detailing the efforts that have been made to place the child
19 in a permanent home and copies of the child's case plan,
20 including the permanency plan as defined in section two hundred
21 one, article one, and section six hundred four, article four of this
22 chapter. Copies of the report shall be sent to the parties and all
23 persons entitled to notice and the right to be heard. The court
24 shall schedule a hearing, giving notice and the right to be present
25 to the child's attorney; the child; the child's parents; the child's
26 guardians; the child's foster parents; any preadoptive parent or
27 any relative providing care for the child; any person entitled to
28 notice and the right to be heard; and other persons as the court
29 may, in its discretion, direct. The child's presence may be

30 waived by the child's attorney at the request of the child or if the
31 child is younger than twelve years and would suffer emotional
32 harm. The purpose of the hearing is to review the child's case, to
33 determine whether and under what conditions the child's
34 commitment to the department shall continue, to determine what
35 efforts are necessary to provide the child with a permanent
36 home, and to determine if the department has made reasonable
37 efforts to finalize the permanency plan. The court shall conduct
38 another permanency hearing within twelve months thereafter for
39 each child who remains in the care, custody, and control of the
40 department until the child is placed in an adoptive home,
41 returned to his or her parents, placed in legal guardianship, or
42 permanently placed with a fit and willing relative.

43 (c) *Transitional planning for older children.* — In the case
44 of a child who has attained sixteen years of age, the court shall
45 determine the services needed to assist the child to make the
46 transition from foster care to independent living. The child's
47 case plan should specify services aimed at transitioning the child
48 into adulthood. When a child turns seventeen, or as soon as a

49 child aged seventeen comes into a case, the department must
50 immediately provide the child with assistance and support in
51 developing a transition plan that is personalized at the direction
52 of the child. The plan must include specific options on housing,
53 health insurance, education, local opportunities for mentors,
54 continuing support services, work force support, and
55 employment services, and the plan should be as detailed as the
56 child may elect. In addition to these requirements, when a child
57 with special needs turns seventeen, or as soon as a child aged
58 seventeen with special needs comes into a case, he or she is
59 entitled to the appointment of a department adult services worker
60 to the multidisciplinary treatment team and coordination
61 between the multidisciplinary treatment team and other
62 transition planning teams, such as special education
63 individualized education planning (IEP) teams.

64 (d) *Out-of-state placements.* – In any case in which the court
65 decides to order the child placed in an out-of-state facility or
66 program it shall set forth in the order directing the placement the
67 reasons why the child was not placed in an in-state facility or

68 program. If the child is to be placed with a relative or other
69 responsible person out of state, the court shall use judicial
70 leadership to help expedite the process under the Interstate
71 Compact for the Placement of Children provided in part one,
72 article seven of this chapter and the Uniform Child Custody
73 Jurisdiction and Enforcement Act provided in article twenty,
74 chapter forty-eight of this code.

75 (e) Findings in order. – At the conclusion of the hearing the
76 court shall, in accordance with the best interests of the child,
77 enter an order containing all the appropriate findings. The court
78 order shall state:

79 (1) Whether or not the department made reasonable efforts
80 to preserve the family and to prevent out-of-home placement or
81 that the specific situation made the effort unreasonable;

82 (2) Whether or not the department made reasonable efforts
83 to finalize the permanency plan and concurrent plan for the
84 child;

85 (3) The appropriateness of the child's current placement,
86 including its distance from the child's home and whether or not
87 it is the least restrictive one (most family-like one) available;

88 (4) The appropriateness of the current educational setting
89 and the proximity to the school in which the child is enrolled at
90 the time of placement;

91 (5) Services required to meet the child's needs and achieve
92 permanency; and

93 (6) In addition, in the case of any child for whom another
94 planned permanent living arrangement is the permanency plan,
95 the court shall (A) inquire of the child about the desired
96 permanency outcome for the child; (B) make a judicial
97 determination explaining why, as of the date of the hearing,
98 another planned permanent living arrangement is the best
99 permanency plan for the child; and, (C) provide in the court
100 order compelling reasons why it continues to not be in the best
101 interest of the child to (i) return home, (ii) be placed for
102 adoption, (iii) be placed with a legal guardian, or (iv) be placed
103 with a fit and willing relative.

104 (f) The department shall annually report to the court the
105 current status of the placements of children in the care, custody
106 and control of the state department who have not been adopted.

107 (g) The department shall file a report with the court in any
108 case where any child in the custody of the state receives more

109 than three placements in one year no later than thirty days after
110 the third placement. This report shall be provided to all parties
111 and persons entitled to notice and the right to be heard. Upon
112 motion by any party, the court shall review these placements and
113 determine what efforts are necessary to provide the child with a
114 permanent home. No report may be provided to any parent or
115 parent's attorney whose parental rights have been terminated
116 pursuant to this article.

117 (h) The department shall give actual notice, in writing, to the
118 court, the child, the child's attorney, the parents and the parents'
119 attorney at least forty-eight hours prior to the move if this is a
120 planned move, or within forty-eight hours of the next business
121 day after the move if the child is in imminent danger in the
122 child's current placement, except where the notification would
123 endanger the child or the foster family. A multidisciplinary
124 treatment team shall convene as soon as practicable after notice
125 to explore placement options. This requirement is not waived by
126 placement of the child in a home or other residence maintained
127 by a private provider. No notice may be provided pursuant to this
128 provision to any parent or parent's attorney whose parental rights
129 have been terminated pursuant to this article.

130 (i) Nothing in this article precludes any party from
131 petitioning the court for review of the child's case at any time.
132 The court shall grant the petition upon a showing that there is a
133 change in circumstance or needs of the child that warrants court
134 review.

135 (j) Any foster parent, preadoptive parent or relative
136 providing care for the child shall be given notice of and the right
137 to be heard at the permanency hearing provided in this section.

§49-4-609. Conviction for offenses against children.

1 In any case where a person is convicted of an offense against
2 a child described in section twelve, article eight, chapter
3 sixty-one of this code or articles eight-b or eight-d of that
4 chapter and the person has custodial, visitation or other parental
5 rights to the child who is the victim of the offense or to any child
6 who resides in the same household as the victim, the court shall,
7 at the time of sentencing, find that the person is an abusing
8 parent within the meaning of this chapter as to the child victim,
9 and may find that the person is an abusing parent as to any child
10 who resides in the same household as the victim, and the court
11 shall take further steps as are required by this article.

§49-4-610. Improvement periods in cases of child neglect or abuse; findings; orders; extensions; hearings; time limits.

1 In any proceeding brought pursuant to this article, the court
2 may grant any respondent an improvement period in accord with
3 this article. During the period, the court may require temporary
4 custody with a responsible person which has been found to be a
5 fit and proper person for the temporary custody of the child or
6 children or the state department or other agency during the
7 improvement period. An order granting an improvement period
8 shall require the department to prepare and submit to the court
9 a family case plan in accordance with section four hundred eight,
10 of this article. The types of improvement periods are as follows:

11 (1) Preadjudicatory improvement period. — A court may
12 grant a respondent an improvement period of a period not to
13 exceed three months prior to making a finding that a child is
14 abused or neglected pursuant to section six hundred one of this
15 article only when:

16 (A) The respondent files a written motion requesting the
17 improvement period;

18 (B) The respondent demonstrates, by clear and convincing
19 evidence, that the respondent is likely to fully participate in the

20 improvement period and the court further makes a finding, on
21 the record, of the terms of the improvement period;

22 (C) In the order granting the improvement period, the court:

23 (i) Orders that a hearing be held to review the matter within
24 sixty days of the granting of the improvement period; or

25 (ii) Orders that a hearing be held to review the matter within
26 ninety days of the granting of the improvement period and that
27 the department submit a report as to the respondents progress in
28 the improvement period within sixty days of the order granting
29 the improvement period; and

30 (D) The order granting the improvement period requires the
31 department to prepare and submit to the court an individualized
32 family case plan in accordance with section four hundred eight
33 of this article;

34 (2) Post-adjudicatory improvement period. — After finding
35 that a child is an abused or neglected child pursuant to section
36 six hundred one of this article, a court may grant a respondent an
37 improvement period of a period not to exceed six months when:

38 (A) The respondent files a written motion requesting the
39 improvement period;

40 (B) The respondent demonstrates, by clear and convincing
41 evidence, that the respondent is likely to fully participate in the
42 improvement period and the court further makes a finding, on
43 the record, of the terms of the improvement period;

44 (C) In the order granting the improvement period, the court:

45 (i) orders that a hearing be held to review the matter within
46 thirty days of the granting of the improvement period; or

47 (ii) orders that a hearing be held to review the matter within
48 ninety days of the granting of the improvement period and that
49 the department submit a report as to the respondent's progress in
50 the improvement period within sixty days of the order granting
51 the improvement period;

52 (D) Since the initiation of the proceeding, the respondent has
53 not previously been granted any improvement period or the
54 respondent demonstrates that since the initial improvement
55 period, the respondent has experienced a substantial change in
56 circumstances. Further, the respondent shall demonstrate that
57 due to that change in circumstances the respondent is likely to
58 fully participate in a further improvement period; and

59 (E) The order granting the improvement period requires the
60 department to prepare and submit to the court an individualized

61 family case plan in accordance with section four hundred eight
62 of this article.

63 (3) *Post-dispositional improvement period.* – The court may
64 grant an improvement period not to exceed six months as a
65 disposition pursuant to section six hundred four of this article
66 when:

67 (A) The respondent moves in writing for the improvement
68 period;

69 (B) The respondent demonstrates, by clear and convincing
70 evidence, that the respondent is likely to fully participate in the
71 improvement period and the court further makes a finding, on
72 the record, of the terms of the improvement period;

73 (C) In the order granting the improvement period, the court:

74 (i) Orders that a hearing be held to review the matter within
75 sixty days of the granting of the improvement period; or

76 (ii) Orders that a hearing be held to review the matter within
77 ninety days of the granting of the improvement period and that
78 the department submit a report as to the respondent's progress in
79 the improvement period within sixty days of the order granting
80 the improvement period;

81 (D) Since the initiation of the proceeding, the respondent has
82 not previously been granted any improvement period or the
83 respondent demonstrates that since the initial improvement
84 period, the respondent has experienced a substantial change in
85 circumstances. Further, the respondent shall demonstrate that
86 due to that change in circumstances, the respondent is likely to
87 fully participate in the improvement period; and

88 (E) The order granting the improvement period shall require
89 the department to prepare and submit to the court an
90 individualized family case plan in accordance with section four
91 hundred eight of this article.

92 (4) Responsibilities of the respondent receiving improvement
93 period. —

94 (A) When any improvement period is granted to a
95 respondent pursuant to this section, the respondent shall be
96 responsible for the initiation and completion of all terms of the
97 improvement period. The court may order the state department
98 to pay expenses associated with the services provided during the
99 improvement period when the respondent has demonstrated that
100 he or she is unable to bear the expenses.

101 (B) When any improvement period is granted to a
102 respondent pursuant to this section, the respondent shall execute
103 a release of all medical information regarding that respondent,
104 including, but not limited to, information provided by mental
105 health and substance abuse professionals and facilities. The
106 release shall be accepted by a professional or facility regardless
107 of whether the release conforms to any standard required by that
108 facility.

109 (5) Responsibilities of the department during improvement
110 period. — When any respondent is granted an improvement
111 period pursuant to this article, the department shall monitor the
112 progress of the person in the improvement period. This section
113 may not be construed to prohibit a court from ordering a
114 respondent to participate in services designed to reunify a family
115 or to relieve the department of any duty to make reasonable
116 efforts to reunify a family required by state or federal law.

117 (6) Extension of improvement period. — A court may extend
118 any improvement period granted pursuant to subdivision (2) or
119 (3) of this section for a period not to exceed three months when
120 the court finds that the respondent has substantially complied
121 with the terms of the improvement period; that the continuation

122 of the improvement period will not substantially impair the
123 ability of the department to permanently place the child; and that
124 the extension is otherwise consistent with the best interest of the
125 child.

126 (7) Termination of improvement period. — Upon the motion
127 by any party, the court shall terminate any improvement period
128 granted pursuant to this section when the court finds that
129 respondent has failed to fully participate in the terms of the
130 improvement period or has satisfied the terms of the
131 improvement period to correct any behavior alleged in the
132 petition or amended petition to make his or her child unsafe.

133 (8) Hearings on improvement period. —

134 (A) Any hearing scheduled pursuant to this section may be
135 continued only for good cause upon a written motion properly
136 served on all parties. When a court grants a continuance, the
137 court shall enter an order granting the continuance specifying a
138 future date when the hearing will be held.

139 (B) Any hearing to be held at the end of an improvement
140 period shall be held as nearly as practicable on successive days
141 and shall be held as close in time as possible after the end of the

142 improvement period and shall be held no later than thirty days of
143 the termination of the improvement period.

144 (9) Time limit for improvement periods. — Notwithstanding
145 any other provision of this section, no combination of any
146 improvement periods or extensions thereto may cause a child to
147 be in foster care more than fifteen months of the most recent
148 twenty-two months, unless the court finds compelling
149 circumstances by clear and convincing evidence that it is in the
150 child's best interests to extend the time limits contained in this
151 paragraph.

PART VII. JUVENILE PROCEEDINGS.

§49-4-701. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; constitutional guarantees; requirements; hearings; right to counsel; opportunity to be heard; evidence and transcripts.

1 (a) The circuit court has original jurisdiction of proceedings
2 brought under this article. A person under the age of eighteen
3 years who appears before the circuit court in proceedings under
4 this article is a ward of the court and protected accordingly.

5 (b) If during a criminal proceeding in any court it is
6 ascertained or appears that the defendant is under the age of
7 nineteen years and was under the age of eighteen years at the

8 time of the alleged offense, the matter shall be immediately
9 certified to the juvenile jurisdiction of the circuit court. The
10 circuit court shall assume jurisdiction of the case in the same
11 manner as cases which are originally instituted in the circuit
12 court by petition.

13 (c) Notwithstanding any other provision of this article,
14 magistrate courts have concurrent juvenile jurisdiction with the
15 circuit court for a violation of a traffic law of West Virginia, for
16 a violation of section nine, article six, chapter sixty, section three
17 or section four, article nine-a, chapter sixteen, or section
18 nineteen, article sixteen, chapter eleven of this code, or for any
19 violation of chapter twenty of this code. Juveniles are liable for
20 punishment for violations of these laws in the same manner as
21 adults except that magistrate courts have no jurisdiction to
22 impose a sentence of incarceration for the violation of these
23 laws.

24 (d) Notwithstanding any other provision of this article,
25 municipal courts have concurrent juvenile jurisdiction with the
26 circuit court for a violation of any municipal ordinance
27 regulating traffic, for any municipal curfew ordinance which is

28 enforceable or for any municipal ordinance regulating or
29 prohibiting public intoxication, drinking or possessing alcoholic
30 liquor or nonintoxicating beer in public places, any other act
31 prohibited by section nine, article six, chapter sixty or section
32 nineteen, article sixteen, chapter eleven of this code or underage
33 possession or use of tobacco or tobacco products, as provided in
34 article nine-a, chapter sixteen of this code. Municipal courts may
35 impose the same punishment for these violations as a circuit
36 court exercising its juvenile jurisdiction could properly impose,
37 except that municipal courts have no jurisdiction to impose a
38 sentence of incarceration for the violation of these laws.

39 (e) A juvenile may be brought before the circuit court for
40 proceedings under this article only by the following means:

41 (1) By a juvenile petition requesting that the juvenile be
42 adjudicated as a status offender or a juvenile delinquent; or

43 (2) By certification or transfer to the juvenile jurisdiction of
44 the circuit court from the criminal jurisdiction of the circuit
45 court, from any foreign court, or from any magistrate court or
46 municipal court in West Virginia.

47 (f)(1) If a juvenile commits an act which would be a crime
48 if committed by an adult, and the juvenile is adjudicated
49 delinquent for that act, the jurisdiction of the court which
50 adjudged the juvenile delinquent continues until the juvenile
51 becomes twenty-one years of age. The court has the same power
52 over that person that it had before he or she became an adult, and
53 has the power to sentence that person to a term of incarceration.
54 Any term of incarceration may not exceed six months. This
55 authority does not preclude the court from exercising criminal
56 jurisdiction over that person if he or she violates the law after
57 becoming an adult or if the proceedings have been transferred to
58 the court's criminal jurisdiction pursuant to section seven
59 hundred four of this article.

60 (2) If a juvenile is adjudicated as a status offender because
61 he or she is habitually absent from school without good cause,
62 the jurisdiction of the court which adjudged the juvenile a status
63 offender continues until either the juvenile becomes twenty-one
64 years of age, completes high school, completes a high school
65 equivalent or other education plan approved by the court, or the
66 court otherwise voluntarily relinquishes jurisdiction, whichever

67 occurs first. If the jurisdiction of the court is extended pursuant
68 to this subdivision, the court has the same power over that
69 person that it had before he or she became an adult. No person
70 so adjudicated who has attained the age of nineteen may be
71 ordered to attend school in a regular, nonalternative setting.

72 (g) A juvenile is entitled to be admitted to bail or
73 recognizance in the same manner as an adult and be afforded the
74 protection guaranteed by Article III of the West Virginia
75 Constitution.

76 (h) A juvenile has the right to be effectively represented by
77 counsel at all stages of proceedings under this article, including
78 participation in multidisciplinary team meetings, until the child
79 is no longer under the jurisdiction of the court. If the juvenile or
80 the juvenile's parent or custodian executes an affidavit showing
81 that the juvenile cannot afford an attorney, the court shall
82 appoint an attorney, who shall be paid in accordance with article
83 twenty-one, chapter twenty-nine of this code.

84 (i)(1) In all proceedings under this article, the juvenile will
85 be afforded a meaningful opportunity to be heard. This includes
86 the opportunity to testify and to present and cross-examine

87 witnesses. The general public shall be excluded from all
88 proceedings under this article except that persons whose
89 presence is requested by the parties and other persons whom the
90 circuit court determines have a legitimate interest in the
91 proceedings may attend.

92 (2) In cases in which a juvenile is accused of committing
93 what would be a felony if the juvenile were an adult, an alleged
94 victim or his or her representative may attend any related
95 juvenile proceedings, at the discretion of the presiding judicial
96 officer.

97 (3) In any case in which the alleged victim is a juvenile, he
98 or she may be accompanied by his or her parents or
99 representative, at the discretion of the presiding judicial officer.

100 (j) At all adjudicatory hearings held under this article, all
101 procedural rights afforded to adults in criminal proceedings shall
102 be afforded the juvenile unless specifically provided otherwise
103 in this chapter.

104 (k) At all adjudicatory hearings held under this article, the
105 rules of evidence applicable in criminal cases apply, including
106 the rule against written reports based upon hearsay.

107 (l) Except for res gestae, extrajudicial statements made by a
108 juvenile who has not attained fourteen years of age to
109 law-enforcement officials or while in custody are not admissible
110 unless those statements were made in the presence of the
111 juvenile’s counsel. Except for res gestae, extrajudicial statements
112 made by a juvenile who has not attained sixteen years of age but
113 who is at least fourteen years of age to law-enforcement officers
114 or while in custody, are not admissible unless made in the
115 presence of the juvenile’s counsel or made in the presence of,
116 and with the consent of, the juvenile’s parent or custodian, and
117 the parent or custodian has been fully informed regarding the
118 juvenile’s right to a prompt detention hearing, the juvenile’s
119 right to counsel, including appointed counsel if the juvenile
120 cannot afford counsel, and the juvenile’s privilege against
121 self-incrimination.

122 (m) A transcript or recording shall be made of all transfer,
123 adjudicatory and dispositional hearings held in circuit court. At
124 the conclusion of each of these hearings, the circuit court shall
125 make findings of fact and conclusions of law, both of which shall
126 appear on the record. The court reporter shall furnish a transcript

127 of the proceedings at no charge to any indigent juvenile who
128 seeks review of any proceeding under this article if an affidavit
129 is filed stating that neither the juvenile nor the juvenile's parents
130 or custodian have the ability to pay for the transcript.

§49-4-702. Prepetition interventions; court referrals; probation officers; giving of counsel.

1 (a) Before a juvenile petition is formally filed with the court,
2 the court may refer the matter to a state department worker or
3 probation officer for preliminary inquiry to determine whether
4 the matter can be resolved informally without the formal filing
5 of a petition with the court.

6 (b) The court at any time, or the department or other official
7 upon a request from a parent, guardian or custodian, may, before
8 proceedings under this article are formally instituted by the filing
9 of a petition with the court, refer a juvenile alleged to be
10 delinquent or a status offender to a counselor at the department
11 or a community mental health center, or other professional
12 counselor in the community. In the event the juvenile refuses to
13 respond to this referral, the department may serve a notice by
14 first class mail or personal service of process upon the juvenile,

15 setting forth the facts and stating that a noncustodial order will
16 be sought from the court directing the juvenile to submit to
17 counseling. The notice shall set forth the time and place for the
18 hearing on the matter. The court after a hearing may direct the
19 juvenile to participate in a noncustodial period of counseling that
20 may not exceed six months. Upon recommendation of the
21 department or request by the juvenile's parent, custodian or
22 guardian, the court may allow or require the parent, custodian or
23 guardian to participate in this noncustodial counseling. No
24 information obtained as the result of this counseling is
25 admissible in a subsequent proceeding under this article.

26 (c) Before a petition is formally filed with the court, the
27 probation officer or other officer of the court designated by it,
28 subject to its direction, may give counsel and advice to the
29 parties with a view to an informal adjustment period if it
30 appears:

31 (1) The admitted facts bring the case within the jurisdiction
32 of the court;

33 (2) Counsel and advice without an adjudication would be in
34 the best interest of the public and the juvenile; and

35 (3) The juvenile and his or her parents, guardian or other
36 custodian consent thereto with knowledge that consent is not
37 obligatory.

38 (d) The giving of counsel and advice pursuant to this section
39 may not continue longer than six months from the day it is
40 commenced unless extended by the court for an additional period
41 not to exceed six months.

§49-4-703. Juvenile drug courts; hearing officers.

1 Juvenile drug courts shall be designed and operated
2 consistent with the developmental and rehabilitative needs of
3 juveniles as defined in this article. The Supreme Court shall
4 provide uniform referral, procedure and order forms that shall be
5 used in juvenile drug courts. The Supreme Court is further
6 authorized to appoint appropriate hearing officers in those
7 jurisdictions which choose to operate a juvenile drug court.
8 Hearing officers for juvenile drug courts shall be limited to
9 current or senior status circuit court judges or family court
10 judges.

§49-4-704. Institution of proceedings by petition; notice to juvenile and parents; preliminary hearings; subpoena.

1 (a)(1) A petition alleging that a juvenile is a status offender
2 or a juvenile delinquent may be filed by a person who has
3 knowledge of or information concerning the facts alleged. The
4 petition shall be verified by the petitioner, shall set forth the
5 name and address of the juvenile's parents, guardians or
6 custodians, if known to the petitioner, and shall be filed in the
7 circuit court in the county where the alleged status offense or act
8 of delinquency occurred. However, a proceeding under this
9 chapter may be removed, for good cause shown, in accordance
10 with section one, article nine, chapter fifty-six of this code. The
11 petition shall contain specific allegations of the conduct and
12 facts upon which the petition is based, including the approximate
13 time and place of the alleged conduct; a statement of the right to
14 have counsel appointed and consult with counsel at every stage
15 of the proceedings; and the relief sought.

16 (2) Upon the filing of the petition, the court shall set a time
17 and place for a preliminary hearing and may appoint counsel. A
18 copy of the petition and summons may be served upon the

19 respondent juvenile by first class mail or personal service of
20 process. If a juvenile does not appear in response to a summons
21 served by mail, no further proceeding may be held until the
22 juvenile is served a copy of the petition and summons by
23 personal service of process. If a juvenile fails to appear in
24 response to a summons served in person upon him or her, an
25 order of arrest may be issued by the court for that reason alone.

26 (b) The parents, guardians or custodians shall be named in
27 the petition as respondents and shall be served with notice of the
28 proceedings in the same manner as provided in subsection (a) of
29 this section for service upon the juvenile and required to appear
30 with the juvenile at the time and place set for the proceedings
31 unless the respondent cannot be found after diligent search. If a
32 respondent cannot be found after diligent search, the court may
33 proceed without further requirement of notice. However, the
34 court may order service by first class mail to the last known
35 address of the respondent. The respondent shall be afforded
36 fifteen days after the date of mailing to appear or answer.

37 (c) The court or referee may order the issuance of a
38 subpoena against the person having custody and control of the
39 juvenile ordering him or her to bring the juvenile before the
40 court.

41 (d) When any case of a juvenile charged with the
42 commission of a crime is certified or transferred to the circuit
43 court, the court shall forthwith cause the juvenile and his or her
44 parents, guardians or custodians to be served with a petition as
45 provided in subsections (a) and (b) of this section. In the event
46 the juvenile is in custody, the petition shall be served upon the
47 juvenile within ninety-six hours of the time custody began and
48 if the petition is not served within that time, the juvenile shall be
49 released forthwith.

50 (e) The clerk of the court shall notify, within two judicial
51 days, the local office of the Department of Health and Human
52 Resources of all proceedings under this article, which is
53 responsible for convening and directing the multidisciplinary
54 treatment planning process in accordance with section four
55 hundred six of this article. In status offense or delinquency cases

56 where a case manager has not been assigned, the juvenile
57 probation officer is responsible for notifying the local office of
58 the Department of Health and Human Services which will assign
59 a case manager who will initiate assessment and be responsible
60 for convening and directing the multidisciplinary treatment
61 planning process.

62 (f) Notwithstanding any other provision of this code to the
63 contrary, a petition filed pursuant to section four hundred three,
64 article twenty-seven, chapter forty-eight of this code in which
65 the petition for the emergency protective order is filed by or on
66 behalf of the juvenile's parent, guardian or custodian or other
67 person with whom the juvenile resides and that results in the
68 issuance of an emergency protective order naming a juvenile as
69 the respondent, shall be treated as a petition authorized by this
70 section, alleging the juvenile is a juvenile delinquent. However,
71 the magistrate court shall notify the prosecuting attorney in the
72 county where the emergency protective order is issued within
73 twenty-four hours of the issuance of the emergency protective
74 order and the prosecuting attorney may file an amended verified

75 petition to comply with subsection (a) of this section within two
76 judicial days.

§49-4-705. Taking a juvenile into custody; requirements; existing conditions; detention centers; medical aid.

1 (a) In proceedings formally instituted by the filing of a
2 juvenile petition, the circuit court or a magistrate may issue an
3 order directing that a juvenile be taken into custody before
4 adjudication only upon a showing of probable cause to believe
5 that one of the following conditions exists: (1) The petition
6 shows that grounds exist for the arrest of an adult in identical
7 circumstances; (2) the health, safety and welfare of the juvenile
8 demand custody; (3) the juvenile is a fugitive from a lawful
9 custody or commitment order of a juvenile court; or (4) the
10 juvenile is alleged to be a juvenile delinquent with a record of
11 willful failure to appear at juvenile proceedings and custody is
12 necessary to assure his or her presence before the court. A
13 detention hearing pursuant to section seven hundred six of this
14 article shall be held by the judge or magistrate authorized to
15 conduct the hearings without unnecessary delay and in no event
16 may any delay exceed the next day.

17 (b) Absent a court order, a juvenile may be taken into
18 custody by a law-enforcement official only if one of the
19 following conditions exists:

20 (1) Grounds exist for the arrest of an adult in identical
21 circumstances;

22 (2) Emergency conditions exist which, in the judgment of
23 the officer, pose imminent danger to the health, safety and
24 welfare of the juvenile;

25 (3) The official has reasonable grounds to believe that the
26 juvenile has left the care of his or her parents, guardian or
27 custodian without the consent of the person and the health, safety
28 and welfare of the juvenile is endangered;

29 (4) The juvenile is a fugitive from a lawful custody or
30 commitment order of a juvenile court;

31 (5) The official has reasonable grounds to believe the
32 juvenile to have been driving a motor vehicle with any amount
33 of alcohol in his or her blood; or

34 (6) The juvenile is the named respondent in an emergency
35 domestic violence protective order issued pursuant to section

36 four hundred three, article twenty-seven, chapter forty-eight of
37 this code and the individual filing the petition for the emergency
38 protective order is the juvenile's parent, guardian or custodian or
39 other person with whom the juvenile resides.

40 (c) Upon taking a juvenile into custody, with or without a
41 court order, the official shall:

42 (1) Immediately notify the juvenile's parent, guardian,
43 custodian or, if the parent, guardian or custodian cannot be
44 located, a close relative;

45 (2) Release the juvenile into the custody of his or her parent,
46 guardian or custodian unless:

47 (A) Circumstances present an immediate threat of serious
48 bodily harm to the juvenile if released;

49 (B) No responsible adult can be found into whose custody
50 the juvenile can be delivered. Each day the juvenile is detained,
51 a written record must be made of all attempts to locate a
52 responsible adult; or

53 (C) The juvenile has been taken into custody for an alleged
54 act of delinquency for which secure detention is permissible.

55 (3) If the juvenile is an alleged status offender or has been
56 taken into custody pursuant to subdivision (6), subsection (b) of
57 this section, immediately notify the Department of Health and
58 Human Resources and, if the circumstances of either paragraph
59 (A) or (B), subdivision (2) of this subsection exist and the
60 requirements therein are met, the official may detain the
61 juvenile, but only in a nonsecure or staff-secure facility;

62 (4) Take the juvenile without unnecessary delay before a
63 judge of the circuit court for a detention hearing pursuant to
64 section seven hundred six of this article. If a circuit court judge
65 is not available in the county, the official shall take the juvenile
66 without unnecessary delay before any magistrate available in the
67 county for the sole purpose of conducting the detention hearing.
68 In no event may any delay in presenting the juvenile for a
69 detention hearing exceed the next day after he or she is taken
70 into custody.

71 (d) In the event that a juvenile is delivered into the custody
72 of a sheriff or director of a detention facility, the sheriff or
73 director shall immediately notify the sheriff or director shall

74 immediately provide to every juvenile who is delivered into his
75 or her custody a written statement explaining the juvenile's right
76 to a prompt detention hearing, his or her right to counsel,
77 including appointed counsel if he or she cannot afford counsel,
78 and his or her privilege against self-incrimination. In all cases
79 when a juvenile is delivered into a sheriff's or detention center
80 director's custody, that official shall release the juvenile to his or
81 her parent, guardian or custodian by the end of the next day
82 unless the juvenile has been placed in detention after a hearing
83 conducted pursuant to section seven hundred six of this article.

84 (e) The law-enforcement agency that takes a juvenile into
85 custody or places a juvenile under arrest is responsible for the
86 juvenile's initial transportation to a juvenile detention center or
87 other Division of Juvenile Services' residential facility.

88 (f) Notwithstanding any other provision of this code, a
89 juvenile detention center, or other Division of Juvenile Services'
90 residential facility, is not required to accept a juvenile if the
91 juvenile appears to be in need of medical attention of a degree
92 necessitating treatment by a physician. If a juvenile is refused

93 pursuant to this subsection, the juvenile detention center, or other
94 Division of Juvenile Services' residential facility, may not
95 subsequently accept the juvenile for detention until the arresting
96 or transporting officer provides the juvenile detention center, or
97 other Division of Juvenile Services' residential facility, with a
98 written clearance from a licensed physician reflecting that the
99 juvenile has been examined and, if necessary, treated and which
100 states that in the physician's medical opinion the juvenile can be
101 safely confined in the juvenile detention center or other Division
102 of Juvenile Services' residential facility.

§49-4-706. Detention hearing; rights of juvenile; notification; counsel; hearings.

1 (a) The circuit court judge or magistrate shall inform the
2 juvenile of his or her right to remain silent, that any statement
3 may be used against him or her and of his or her right to counsel,
4 and no interrogation may be made without the presence of a
5 parent or counsel. If the juvenile or his or her parent, guardian or
6 custodian has not retained counsel, counsel shall be appointed as
7 soon as practicable. The circuit court judge or magistrate shall
8 hear testimony concerning the circumstances for taking the

9 juvenile into custody and the possible need for detention. The
10 sole mandatory issue at the detention hearing is whether the
11 juvenile should be detained pending further court proceedings.
12 The court shall, if the health, safety and welfare of the juvenile
13 will not be endangered thereby, release the juvenile on
14 recognizance to his or her parents, custodians or an appropriate
15 agency; however, if warranted, the court may require bail, except
16 that bail may be denied in any case where bail could be denied
17 if the accused were an adult. The court shall:

18 (1) Immediately notify the juvenile's parent, guardian or
19 custodian or, if the parent, guardian or custodian cannot be
20 located, a close relative;

21 (2) Release the juvenile into the custody of his or her parent,
22 guardian or custodian unless:

23 (A) Circumstances present an immediate threat of serious
24 bodily harm to the juvenile if released;

25 (B) No responsible adult can be found into whose custody
26 the juvenile can be delivered. However, each day the juvenile is
27 detained, a written record must be made of all attempts to locate
28 a responsible adult; or

29 (C) The juvenile is charged with an act of delinquency for
30 which secure detention is permissible; and

31 (3) If the juvenile is an alleged status offender, immediately
32 notify the Department of Health and Human Resources, and, if
33 the circumstances of either paragraph (A) or (B), subdivision (2)
34 of this subsection exist and the requirements therein are met, the
35 court may order the juvenile detained, but only in a nonsecure or
36 staff-secure facility. Any juvenile detained pursuant to this
37 subdivision shall be placed in the legal custody of the
38 Department of Health and Human Resources pending further
39 proceedings by the court.

40 (b) The circuit court judge or magistrate may, in conjunction
41 with the detention hearing, conduct a preliminary hearing
42 pursuant to section seven hundred and four of this article if all
43 the parties are prepared to proceed and the juvenile has counsel
44 during the hearing.

49-4-707. Review of order following detention hearing.

1 Upon the application of any person in interest or on his or
2 her own motion, a circuit court judge may modify or vacate any

3 order entered in his or her court after a detention hearing and
4 enter the order as to detention, or release from detention, as he
5 or she deems just and proper.

§49-4-708. Preliminary hearing; counsel; custody; court requirements; preadjudicatory community supervision period.

1 (a) Following the filing of a juvenile petition, unless a
2 preliminary hearing has previously been held in conjunction with
3 a detention hearing with respect to the same charge contained in
4 the petition, the circuit court judge or magistrate shall hold a
5 preliminary hearing. In the event that the juvenile is being
6 detained, the hearing shall be held within ten days of the time the
7 juvenile is placed in detention unless good cause is shown for a
8 continuance. If no preliminary hearing is held within ten days of
9 the time the juvenile is placed in detention, the juvenile shall be
10 released on recognizance unless the hearing has been continued
11 for good cause. If the judge is in another county in the circuit,
12 the hearing may be conducted in that other county or by video
13 conferencing. Written notice shall be provided to all parties of
14 the availability to participate by videoconferencing. The

15 preliminary hearing may be waived by the juvenile, upon advice
16 of counsel. At the hearing, the circuit court judge or magistrate
17 shall:

18 (1) If the juvenile is not represented by counsel, inform the
19 juvenile and his or her parents, guardian or custodian or any
20 other person standing in loco parentis to him or her of the
21 juvenile's right to be represented at all stages of proceedings
22 under this article and the right to have counsel appointed;

23 (2) Appoint counsel by order entered of record, if counsel
24 has not already been retained, or appointed. Counsel must
25 represent the child until he or she is no longer under the
26 jurisdiction of the court;

27 (3) Determine after hearing if there is probable cause to
28 believe that the juvenile is a status offender or a juvenile
29 delinquent. If probable cause is not found, the juvenile, if in
30 detention, shall be released and the proceedings dismissed. If
31 probable cause is found, the case shall proceed to adjudication.
32 At this hearing or as soon thereafter as is practicable, the date for
33 the adjudicatory hearing shall be set to give the juvenile and the

34 juvenile's parents and attorney at least ten days' notice unless
35 notice is waived by all parties;

36 (4) In lieu of placing the juvenile in a detention facility, the
37 court may place the juvenile in the temporary legal and/or
38 physical custody of the department. If the juvenile is detained,
39 the detention may not continue longer than thirty days without
40 commencement of the adjudicatory hearing unless good cause
41 for a continuance is shown by either party or, if a jury trial is
42 demanding, no longer than the next regular term of the court. A
43 juvenile who is alleged to be a status offender may not be placed
44 in a secure detention facility; and

45 (5) Inform the juvenile of the right to demand a jury trial.

46 (b) The juvenile may move to be allowed a preadjudicatory
47 community supervision period not to exceed one year. If the
48 court is satisfied that the best interest of the juvenile is likely to
49 be served by a preadjudicatory community supervision period,
50 the court may delay the adjudicatory hearing and allow a
51 preadjudicatory community supervision period upon terms
52 calculated to serve the rehabilitative needs of the juvenile. At the
53 conclusion of the preadjudicatory community supervision period,

54 the court shall dismiss the proceeding if the terms have been
55 fulfilled; otherwise, the court shall proceed to the adjudicatory
56 stage. A motion for a pre-adjudicatory community supervision
57 period, may not be construed as an admission or be used as
58 evidence. Preadjudicatory community supervision periods
59 authorized by this subsection may be, in the court's discretion,
60 either custodial or noncustodial.

§49-4-709. Right to jury trial for juveniles; inapplicability.

1 (a) In a proceeding under this article, the juvenile, the
2 juvenile's counsel or the juvenile's parent or guardian may
3 demand, or the judge on his or her own motion may order a jury
4 trial on any question of fact, in which the juvenile is accused of
5 any act or acts of delinquency which, if committed by an adult
6 would expose the adult to incarceration.

7 (b) A juvenile who is charged with a status offense or other
8 offense where incarceration is not a possibility due either to the
9 statutory penalty or where the court rules pretrial that a sentence
10 of incarceration will not be imposed upon adjudication is not
11 entitled to a trial by jury.

12 (c) This section is inapplicable to proceedings held pursuant
13 to section one hundred seventeen of this article.

14 (d) Juries consist of twelve members.

§49-4-710. Waiver and transfer of jurisdiction.

1 (a) Upon written motion of the prosecuting attorney filed at
2 least eight days prior to the adjudicatory hearing and with
3 reasonable notice to the juvenile, his or her counsel, and his or
4 her parents, guardians or custodians, the court shall conduct a
5 hearing to determine if juvenile jurisdiction should or must be
6 waived and the proceeding transferred to the criminal
7 jurisdiction of the court. Any motion filed in accordance with
8 this section is to state, with particularity, the grounds for the
9 requested transfer, including the grounds relied upon as set forth
10 in subsection (d), (e), (f) or (g) of this section, and the burden is
11 upon the state to establish the grounds by clear and convincing
12 evidence. Any hearing held under this section is to be held
13 within seven days of the filing of the motion for transfer unless
14 it is continued for good cause.

15 (b) No inquiry relative to admission or denial of the
16 allegations of the charge or the demand for jury trial may be

17 made by or before the court until the court has determined
18 whether the proceeding is to be transferred to criminal
19 jurisdiction.

20 (c) The court shall transfer a juvenile proceeding to criminal
21 jurisdiction if a juvenile who has attained the age of fourteen
22 years makes a demand on the record to be transferred to the
23 criminal jurisdiction of the court. The case may then be referred
24 to magistrate or circuit court for further proceedings, subject to
25 the court's jurisdiction.

26 (d) The court shall transfer a juvenile proceeding to criminal
27 jurisdiction if there is probable cause to believe that:

28 (1) The juvenile is at least fourteen years of age and has
29 committed the crime of treason under section one, article one,
30 chapter sixty-one of this code; the crime of murder under
31 sections one, two and three, article two of that chapter; the crime
32 of robbery involving the use or presenting of firearms or other
33 deadly weapons under section twelve, article two of that chapter;
34 the crime of kidnapping under section fourteen-a of article two
35 of that chapter; the crime of first degree arson under section one,

36 article three of that chapter; or the crime of sexual assault in the
37 first degree under section three, article eight-b of that chapter;

38 (2) The juvenile is at least fourteen years of age and has
39 committed an offense of violence to the person which would be
40 a felony if the juvenile was an adult. However, the juvenile has
41 been previously adjudged delinquent for the commission of an
42 offense of violence to the person which would be a felony if the
43 juvenile was an adult; or

44 (3) The juvenile is at least fourteen years of age and has
45 committed an offense which would be a felony if the juvenile
46 was an adult. However, the juvenile has been twice previously
47 adjudged delinquent for the commission of an offense which
48 would be a felony if the juvenile was an adult.

49 (e) The court may transfer a juvenile proceeding to criminal
50 jurisdiction if there is probable cause to believe that the juvenile
51 would otherwise satisfy the provisions of subdivision (1),
52 subsection (d) of this section, but who is younger than fourteen
53 years of age.

54 (f) The court may, upon consideration of the juvenile's
55 mental and physical condition, maturity, emotional attitude,
56 home or family environment, school experience and similar
57 personal factors, transfer a juvenile proceeding to criminal
58 jurisdiction if there is probable cause to believe that the juvenile
59 would otherwise satisfy the provisions of subdivision (2) or (3),
60 subsection (d) of this section, but who is younger than fourteen
61 years of age.

62 (g) The court may, upon consideration of the juvenile's
63 mental and physical condition, maturity, emotional attitude,
64 home or family environment, school experience and similar
65 personal factors, transfer a juvenile proceeding to criminal
66 jurisdiction if there is probable cause to believe that:

67 (1) The juvenile, who is at least fourteen years of age, has
68 committed an offense of violence to a person which would be a
69 felony if the juvenile was an adult;

70 (2) The juvenile, who is at least fourteen years of age, has
71 committed an offense which would be a felony if the juvenile
72 was an adult. However, the juvenile has been previously

73 adjudged delinquent for the commission of a crime which would
74 be a felony if the juvenile was an adult;

75 (3) The juvenile, who is at least fourteen years of age, used
76 or presented a firearm or other deadly weapon during the
77 commission of a felony; or

78 (4) The juvenile has committed a violation of section four
79 hundred one, article four, chapter sixty-a of this code which
80 would be a felony if the juvenile was an adult involving the
81 manufacture, delivery or possession with the intent to deliver a
82 narcotic drug. For purposes of this subdivision, the term narcotic
83 drug has the same definition as that set forth in section one
84 hundred one, article one of that chapter;

85 (5) The juvenile has committed the crime of second degree
86 arson as defined in section two, article three, chapter sixty-one
87 of this code involving setting fire to or burning a public building
88 or church. For purposes of this subdivision, the term public
89 building means a building or structure of any nature owned,
90 leased or occupied by this state, a political subdivision of this
91 state or a county board of education and used at the time of the

92 alleged offense for public purposes. For purposes of this
93 subdivision, the term church means a building or structure of any
94 nature owned, leased or occupied by a church, religious sect,
95 society or denomination and used at the time of the alleged
96 offense for religious worship or other religious or benevolent
97 purpose, or as a residence of a minister or other member of
98 clergy.

99 (h) For purposes of this section, the term offense of violence
100 means an offense which involves the use or threatened use of
101 physical force against a person.

102 (i) If, after a hearing, the court directs the transfer of any
103 juvenile proceeding to criminal jurisdiction, it shall state on the
104 record the findings of fact and conclusions of law upon which its
105 decision is based or shall incorporate findings of fact and
106 conclusions of law in its order directing transfer.

107 (j) A juvenile who has been transferred to criminal
108 jurisdiction pursuant to subsection (e), (f) or (g) of this section,
109 by an order of transfer, has the right to either directly appeal an
110 order of transfer to the supreme court of appeals or to appeal the

111 order of transfer following a conviction of the offense of
112 transfer. If the juvenile exercises the right to a direct appeal from
113 an order of transfer, the notice of intent to appeal and a request
114 for transcript is to be filed within ten days from the date of the
115 entry of any order of transfer, and the petition for appeal is to be
116 presented to the Supreme Court of Appeals within forty-five
117 days from the entry of the order of transfer. Article five, chapter
118 fifty-eight of this code pertaining to the appeals of judgments in
119 civil actions applies to appeals under this chapter except as
120 modified in this section. The court may, within forty-five days
121 of the entry of the order of transfer, by appropriate order, extend
122 and reextend the period in which to file the petition for appeal
123 for additional time, not to exceed a total extension of sixty days,
124 as in the court's opinion may be necessary for preparation of the
125 transcript. However, the request for a transcript was made by the
126 party seeking appeal within ten days of entry of the order of
127 transfer. In the event any notice of intent to appeal and request
128 for transcript be timely filed, proceedings in criminal court are

129 to be stayed upon motion of the defendant pending final action
130 of the Supreme Court of Appeals.

§49-4-711. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders; court orders.

1 At the outset of an adjudicatory hearing, the court shall
2 inquire of the juvenile whether he or she wishes to admit or deny
3 the allegations in the petition. The juvenile may elect to stand
4 mute, in which event the court shall enter a general denial of all
5 allegations in the petition.

6 (1) If the respondent juvenile admits the allegations of the
7 petition, the court shall consider the admission to be proof of the
8 allegations if the court finds: (1) The respondent fully
9 understands all of his or her rights under this article; (2) the
10 respondent voluntarily, intelligently and knowingly admits all
11 facts requisite for an adjudication; and (3) the respondent in his
12 or her admission has not set forth facts which constitute a
13 defense to the allegations.

14 (2) If the respondent juvenile denies the allegations, the
15 court shall dispose of all pretrial motions and the court or jury
16 shall proceed to hear evidence.

17 (3) If the allegations in a petition alleging that the juvenile
18 is delinquent are admitted or are sustained by proof beyond a
19 reasonable doubt, the court shall schedule the matter for
20 disposition pursuant to section seven hundred four of this article.

21 (4) If the allegations in a petition alleging that the juvenile
22 is a status offender are admitted or sustained by clear and
23 convincing proof, the court shall refer the juvenile to the
24 Department of Health and Human Resources for services,
25 pursuant to section seven hundred twelve of this article and order
26 the department to report back to the court with regard to the
27 juvenile's progress at least every ninety days or until the court,
28 upon motion or sua sponte, orders further disposition under
29 section seven hundred four of this article or dismisses the case
30 from its docket. In a judicial circuit operating its own truancy
31 program, a circuit judge may in lieu of referring truant juveniles
32 to the department, order that the juveniles be supervised by his
33 or her probation office.

34 (5) If the allegations in a petition are not sustained by proof
35 as provided in subsections (3) and (4) of this section, the petition

36 shall be dismissed and the juvenile shall be discharged if he or
37 she is in custody.

38 (6) Findings of fact and conclusions of law addressed to all
39 allegations in the petition shall be stated on the record or reduced
40 to writing and filed with the record or incorporated into the order
41 of the court.

§49-4-712. Intervention and services by the department pursuant to initial disposition for status offenders; service plan; enforcement; further disposition; detention; out-of-home placement; department custody; least restrictive alternative; appeal.

1 (a) The services provided by the department for juveniles
2 adjudicated as status offenders shall be consistent with part ten,
3 article two of this chapter and shall be designed to develop skills
4 and supports within families and to resolve problems related to
5 the juveniles or conflicts within their families. Services may
6 include, but are not limited to, referral of juveniles and parents,
7 guardians or custodians and other family members to services for
8 psychiatric or other medical care, or psychological, welfare,
9 legal, educational or other social services, as appropriate to the
10 needs of the juvenile and his or her family.

11 (b) If the child or family of the child fails to comply with the
12 service plan, the department may petition the circuit court:

13 (1) For a valid court order, as defined in section two hundred
14 seven, article one of this chapter, to enforce compliance with a
15 service plan or to restrain actions that interfere with or defeat a
16 service plan; or

17 (2) For a valid court order to place a juvenile out of home in
18 a nonsecure or staff-secure setting, and/or to place a juvenile in
19 custody of the department.

20 (c) In ordering any further disposition under this section, the
21 court is not limited to the relief sought in the department's
22 petition and reasonable efforts made to prevent removal of the
23 juvenile from his or her home or as an alternative to place the
24 juvenile in community-based facilities which are the least
25 restrictive alternatives appropriate to the needs of the juvenile
26 and the community.

27 (d) The disposition of the juvenile may not be affected by the
28 fact that the juvenile demanded a trial by jury or made a plea of
29 denial. Any order providing disposition other than mandatory

30 referral to the department for services is subject to appeal to the
31 Supreme Court of Appeals.

32 (e) Following any further disposition by the court, the court
33 shall inquire of the juvenile whether or not appeal is desired and
34 the response shall be transcribed; a negative response may not be
35 construed as a waiver. The evidence shall be transcribed as soon
36 as practicable and made available to the juvenile or his or her
37 counsel, if it is requested for purposes of further proceedings. A
38 judge may grant a stay of execution pending further proceedings.

§49-4-713. Graduated penalties for juvenile alcohol consumption;
finer; community service; revocation of driver's
license.

1 (a) Notwithstanding any provision of this article to the
2 contrary, in addition to any other penalty available to the court,
3 any child who is adjudicated to have consumed alcoholic liquor
4 or nonintoxicating beer as defined in section five, article one,
5 chapter sixty of this code, shall:

6 (1) Upon a first adjudication, he or she shall be ordered to
7 perform community service for not more than eight hours or
8 finer not more than \$25, or both performing community service
9 and finer.

10 (2) Upon a second adjudication, he or she shall be ordered to
11 perform community service for not more than sixteen hours or
12 fined not more than \$50, or both performing community service
13 and fined.

14 (3) Upon a third or subsequent adjudication, he or she shall
15 be ordered to perform not more than twenty-four hours of
16 community service or fined not more than \$100, or both
17 performing community service and fined.

18 (b) In addition to the penalties set forth in subsection (a) of
19 this section and notwithstanding the provisions of subdivision
20 (4), subsection (a), section seven hundred fifteen of this article,
21 any child adjudicated a second time for consumption of alcoholic
22 liquor or nonintoxicating beer shall have his or her license to
23 operate a motor vehicle suspended for a definite term of not less
24 than five nor more than ninety days. Any child adjudicated a
25 third or subsequent time for consumption of an alcoholic liquor
26 or nonintoxicating beer shall have his or her license to operate a
27 motor vehicle suspended until he or she attains the age of
28 eighteen years.

§49-4-714. Disposition of juvenile delinquents; investigation; proceedings; court discretion; orders; appeal.

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

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

18 (1) Dismiss the petition;

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

22 (3) Upon a finding that the juvenile is in need of
23 extra-parental supervision: (A) Place the juvenile under the
24 supervision of a probation officer of the court or of the court of
25 the county where the juvenile has his or her usual place of abode
26 or other person while leaving the juvenile in custody of his or
27 her parent or custodian; and (B) prescribe a program of treatment
28 or therapy or limit the juvenile's activities under terms which are
29 reasonable and within the child's ability to perform, including
30 participation in the litter control program established pursuant to
31 section three, article fifteen-a, chapter twenty-two of this code or
32 other appropriate programs of community service;

33 (4) Upon a finding that a parent or custodian is not willing
34 or able to take custody of the juvenile, that a juvenile is not
35 willing to reside in the custody of his or her parent or custodian
36 or that a parent or custodian cannot provide the necessary
37 supervision and care of the juvenile, the court may place the

38 juvenile in temporary foster care or temporarily commit the
39 juvenile to the department or a child welfare agency. The court
40 order shall state that continuation in the home is contrary to the
41 best interest of the juvenile and why; and whether or not the
42 department made a reasonable effort to prevent the placement or
43 that the emergency situation made those efforts unreasonable or
44 impossible. Whenever the court transfers custody of a youth to
45 the department, an appropriate order of financial support by the
46 parents or guardians shall be entered in accordance with part
47 eight, article four of this chapter and guidelines promulgated by
48 the Supreme Court of Appeals;

49 (5)(A) Upon a finding that the best interests of the juvenile
50 or the welfare of the public require it, and upon an adjudication
51 of delinquency the court may commit the juvenile to the custody
52 of the Director of the Division of Juvenile Services for
53 placement in a juvenile services facility for the treatment,
54 instruction and rehabilitation of juveniles. The court maintains
55 discretion to consider alternative sentencing arrangements.

56 (B) Notwithstanding any provision of this code to the
57 contrary, in the event that the court determines that it is in the

58 juvenile's best interests or required by the public welfare to
59 place the juvenile in the custody of the Division of Juvenile
60 Services, the court shall provide the Division of Juvenile
61 Services with access to all relevant court orders and records
62 involving the underlying offense or offenses for which the
63 juvenile was adjudicated delinquent, including sentencing and
64 presentencing reports and evaluations, and provide the division
65 with access to school records, psychological reports and
66 evaluations, medical reports and evaluations or any other records
67 as may be in the court's possession as would enable the Division
68 of Juvenile Services to better assess and determine the
69 appropriate counseling, education and placement needs for the
70 juvenile offender.

71 (C) Commitments may not exceed the maximum term for
72 which an adult could have been sentenced for the same offense
73 and any maximum allowable sentence to be served in a juvenile
74 correctional facility may take into account any time served by
75 the juvenile in a detention center pending adjudication,
76 disposition or transfer. The order shall state that continuation in

77 the home is contrary to the best interests of the juvenile and why;
78 and whether or not the state department made a reasonable effort
79 to prevent the placement or that the emergency situation made
80 those efforts unreasonable or impossible; or

81 (6) After a hearing conducted under the procedures set out
82 in subsections (c) and (d), section four, article five, chapter
83 twenty-seven of this code, commit the juvenile to a mental health
84 facility in accordance with the juvenile's treatment plan; the
85 director of the mental health facility may release a juvenile and
86 return him or her to the court for further disposition. The order
87 shall state that continuation in the home is contrary to the best
88 interests of the juvenile and why; and whether or not the state
89 department made a reasonable effort to prevent the placement or
90 that the emergency situation made those efforts unreasonable or
91 impossible.

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

96 (d) The disposition of the juvenile may not be affected by the
97 fact that the juvenile demanded a trial by jury or made a plea of
98 denial. Any dispositional order is subject to appeal to the
99 Supreme Court of Appeals.

100 (e) Following disposition, the court shall inquire whether the
101 juvenile wishes to appeal and the response shall be transcribed;
102 a negative response may not be construed as a waiver. The
103 evidence shall be transcribed as soon as practicable and made
104 available to the juvenile or his or her counsel, if the same is
105 requested for purposes of further proceedings. A judge may grant
106 a stay of execution pending further proceedings.

107 (f) Notwithstanding any other provision of this code to the
108 contrary, if a juvenile charged with delinquency under this
109 chapter is transferred to adult jurisdiction and there tried and
110 convicted, the court may make its disposition in accordance with
111 this section in lieu of sentencing the person as an adult.

**§49-4-715. Authority of the courts to impose additional penalties;
public service projects; ineligible to operate a motor
vehicle; restitution.**

1 (a) In addition to the methods of disposition provided in
2 section seven hundred fourteen of this article, the court may

3 enter an order imposing one or more of the following penalties,
4 conditions and limitations:

5 (1) Impose a fine not to exceed \$100 upon the child;

6 (2) Require the child to make restitution or reparation to the
7 aggrieved party or parties for actual damages or loss caused by
8 the offense for which the child was found to be delinquent, or if
9 the child does not make full restitution, require the custodial
10 parent or parents, as defined in section two, article seven-a,
11 chapter fifty-five, of the child to make partial or full restitution
12 to the victim to the extent the child fails to make full restitution;

13 (3) Require the child to participate in a public service project
14 under the conditions as the court prescribes, including
15 participation in the litter control program established pursuant to
16 the authority of section three, article fifteen-a, chapter
17 twenty-two of this code; and

18 (4) When the child is fifteen years of age or younger and has
19 been adjudged delinquent, the court may order that the child is
20 not eligible to be issued a junior probationary operator's license
21 or when the child is between the ages of sixteen and eighteen

22 years and has been adjudged delinquent, the court may order that
23 the child is not eligible to operate a motor vehicle in this state,
24 and any junior or probationary operator's license shall be
25 surrendered to the court. The child's driving privileges shall be
26 suspended for a period not to exceed two years, and the clerk of
27 the court shall notify the Commissioner of the Division of Motor
28 Vehicles of the order.

29 (b) Nothing may limit the discretion of the court in disposing
30 of a juvenile case. The juvenile may not be denied probation or
31 any other disposition pursuant to this article because the juvenile
32 is financially unable to pay a fine or make restitution or
33 reparation. All penalties, conditions and limitations imposed
34 under this section shall be based upon a consideration by the
35 court of the seriousness of the offense, the child's ability to pay
36 and a program of rehabilitation consistent with the best interests
37 of the child.

38 (c) Notwithstanding any other provisions of this code to the
39 contrary, in the event a child charged with delinquency under
40 this chapter is transferred to adult jurisdiction and there

41 convicted, the court may nevertheless, in lieu of sentencing the
42 person as an adult, make its disposition in accordance with this
43 section.

§49-4-716. Teen court program; alternative; suitability; unsuccessful cooperation; requirements; fees.

1 (a) Notwithstanding any provision of this article to the
2 contrary, any county or municipality may choose to institute a
3 teen court program in accordance with this section.

4 (b) An juvenile may be given the option of proceeding in a
5 teen court program as an alternative to the filing of a formal
6 proceeding pursuant to section seven hundred four or section
7 seven hundred fourteen of this article if:

8 (1) The juvenile is alleged to have committed a status
9 offense or an act of delinquency that would be a misdemeanor if
10 committed by an adult;

11 (2) The juvenile is alleged to have violated a municipal
12 ordinance over which municipal court and state court have
13 concurrent jurisdiction; or

14 (3) The juvenile is otherwise subject to the provisions of this
15 article.

16 (c) If the circuit court or municipal court finds that the
17 offender is a suitable candidate for the teen court program, it
18 may extend the option to enter the program as an alternative
19 procedure. A juvenile may not enter the teen court program
20 unless he or she and his or her parent or guardian consent to
21 participating in the program.

22 (d) Any juvenile who does not successfully cooperate in, and
23 complete, the teen court program and any disposition imposed
24 during the juvenile's participation shall be returned to the circuit
25 court for further disposition as provided by section seven
26 hundred and twelve or seven hundred fourteen of this article, as
27 the case may be or returned to the municipal court for further
28 disposition for cases originating in municipal court consistent
29 with any applicable ordinance.

30 (e) The following provisions apply to all teen court
31 programs:

32 (1) The judge for each teen court proceeding shall be an
33 acting or retired circuit court judge or an active member of the
34 West Virginia State Bar, who serves on a voluntary basis.

35 (2) Any juvenile who selects the teen court program as an
36 alternative disposition shall agree to serve thereafter on at least
37 two occasions as a teen court juror.

38 (3) Volunteer students from grades seven through twelve of
39 the schools within the county shall be selected to serve as
40 defense attorney, prosecuting attorney, court clerk, bailiff and
41 jurors for each proceeding.

42 (4) Disposition in a teen court proceeding shall consist of
43 requiring the juvenile to perform sixteen to forty hours of
44 community service, the duration and type of which shall be
45 determined by the teen court jury from a standard list of
46 available community service programs provided by the county
47 juvenile probation system and a standard list of alternative
48 consequences that are consistent with the purposes of this article.
49 The performance of the juvenile shall be monitored by the
50 county juvenile probation system for cases originating in the
51 circuit court's jurisdiction, or municipal teen court coordinator
52 or other designee for cases originating in the municipal court's
53 jurisdiction. The juvenile shall also perform at least two sessions

54 of teen court jury service and, if considered appropriate by the
55 circuit court judge or teen court judge, participate in an
56 education program. Nothing in this section may be construed so
57 as to deny availability of the services provided under section
58 seven hundred and twelve of this article to juveniles who are
59 otherwise eligible for the service.

60 (f) The rules for administration, procedure and admission of
61 evidence shall be determined by the chief circuit judge or teen
62 court judge, but in no case may the court require a juvenile to
63 admit the allegation against him or her as a prerequisite to
64 participation in the teen court program. A copy of these rules
65 shall be provided to every teen court participant.

66 (g) Each county or municipality that operates, or wishes to
67 operate, a teen court program as provided in this section is
68 hereby authorized to adopt a mandatory fee of up to \$5 to be
69 assessed as provided in this subsection. Municipal courts may
70 assess a fee pursuant to this section upon authorization by the
71 city council of the municipality. Assessments collected by the
72 clerk of the court pursuant to this subsection shall be deposited

73 into an account specifically for the operation and administration
74 of a teen court program. The clerk of the court of conviction
75 shall collect the fees established in this subsection and shall
76 remit the fees to the teen court program.

77 (h) Any mandatory fee established by a county commission
78 or city council in accordance with this subsection shall be paid
79 by the defendant on a judgment of guilty or a plea of nolo
80 contendere for each violation committed in the county or
81 municipality of any felony, misdemeanor or any local ordinance,
82 including traffic violations and moving violations but excluding
83 municipal parking ordinances. Municipalities operating teen
84 courts are authorized to use fees assessed in municipal court
85 pursuant to this subsection for operation of a teen court in their
86 municipality

§49-4-717. Sexting educational diversion program; requirements.

1 (a) Before a juvenile petition is filed for activity proscribed
2 by article eight-a or eight-c, chapter sixty-one of this code, or
3 after probable cause has been found to believe a juvenile has
4 committed a violation thereof, but before an adjudicatory hearing

5 on the petition, the court or a prosecuting attorney may direct or
6 allow a minor who engaged in the activity to participate in an
7 educational diversion program which meets the requirements of
8 subsection (b) of this section. The prosecutor or court may refer
9 the minor to the educational diversion program, as part of a
10 prepetition intervention pursuant to section seven hundred two
11 of this article.

12 (b) The West Virginia Supreme Court of Appeals may
13 develop an educational diversion program for minors who are
14 accused of activity proscribed by article eight-a or eight-c,
15 chapter sixty-one of this code. As a part of any specialized
16 educational diversion program so developed, the following
17 issues and topics should be included:

18 (1) The legal consequences of and penalties for sharing
19 sexually suggestive or explicit materials, including applicable
20 federal and state statutes;

21 (2) The nonlegal consequences of sharing sexually
22 suggestive or explicit materials including, but not limited to, the
23 effect on relationships, loss of educational and employment

24 opportunities, and being barred or removed from school
25 programs and extracurricular activities;

26 (3) How the unique characteristics of cyberspace and the
27 Internet, including searchability, replicability and an infinite
28 audience, can produce long-term and unforeseen consequences
29 for sharing sexually suggestive or explicit materials; and

30 (4) The connection between bullying and cyber-bullying and
31 minors sharing sexually suggestive or explicit materials.

32 (c) Once a specialized educational diversion program is
33 established by the West Virginia Supreme Court of Appeals
34 consistent with this section, the minor's successful completion
35 of the educational diversion program shall be duly considered by
36 the prosecutor or the court in their respective decisions to either
37 abstain from filing the juvenile petition or to dismiss the juvenile
38 petition, as follows:

39 (1) If the minor has not previously been judicially
40 determined to be delinquent, and the minor's activities represent
41 a first offense for a violation of section three-b, article eight-c,
42 chapter sixty-one of this code, the minor is not subject to the

43 requirements of that section, as long as he or she successfully
44 completes the educational diversion program; and

45 (2) If the minor commits a second or subsequent violation of
46 article eight-a or eight-c, chapter sixty-one of this code, the
47 minor's successful completion of the educational diversion
48 program may be considered as a factor to be considered by the
49 prosecutor and court in deciding to not file a petition or to
50 dismiss a petition, upon successful completion of an
51 improvement plan established by the court.

§49-4-718. Modification of dispositional orders; motions; hearings.

1 (a) A dispositional order of the court may be modified:

2 (1) Upon the motion of the probation officer, a department
3 official, the director of the division of juvenile services or
4 prosecuting attorney; or

5 (2) Upon the request of the child or a child's parent or
6 custodian who alleges a change of circumstances relating to
7 disposition of the child.

8 (b) Upon a motion or request, the court shall conduct a
9 review proceeding, except that if the last dispositional order was

10 within the previous six months the court may deny a request for
11 review. Notice in writing of a review proceeding shall be given
12 to the child, the child's parent or custodian and all counsel not
13 less than seventy-two hours prior to the proceeding. The court
14 shall review the performance of the child, the child's parent or
15 custodian, the child's social worker and other persons providing
16 assistance to the child or child's family. If the motion or request
17 for review of disposition is based upon an alleged violation of a
18 court order, the court may modify the dispositional order to a
19 more restrictive alternative if it finds clear and convincing proof
20 of substantial violation. In the absence of proof, the court may
21 decline to modify the dispositional order or may modify the
22 order to one of the less restrictive alternatives set forth in section
23 seven hundred twelve of this article. A juvenile may not be
24 required to seek a modification order as provided in this section
25 in order to exercise his or her right to seek release by habeas
26 corpus.

27 (c) In a hearing for modification of a dispositional order, or
28 in any other dispositional hearing, the court shall consider the
29 best interests of the child and the welfare of the public.

§49-4-719. Juvenile probation officers; appointment; salary; facilities; expenses; duties; powers.

1 (a)(1) Each circuit court, subject to the approval of the
2 Supreme Court of Appeals and in accordance with the rules of
3 the Supreme Court of Appeals, shall appoint one or more
4 juvenile probation officers and clerical assistants for the circuit.
5 A probation officer or clerical assistant may not be related by
6 blood or marriage to the appointing judge.

7 (2) The salary for juvenile probation officers and clerical
8 assistants shall be determined and fixed by the Supreme Court of
9 Appeals. All expenses and costs incurred by the juvenile
10 probation officers and their staff shall be paid by the Supreme
11 Court of Appeals in accordance with its rules. The county
12 commission of each county shall provide adequate office
13 facilities for juvenile probation officers and their staff. All
14 equipment and supplies required by juvenile probation officers
15 and their staff shall be provided by the Supreme Court of
16 Appeals.

17 (3) A juvenile probation officer may not be considered a
18 law-enforcement official under this chapter.

19 (b) The clerk of a court shall notify, if practicable, the chief
20 probation officer of the county, or his or her designee, when a
21 juvenile is brought before the court or judge for proceedings
22 under this article. When notified, or if the probation officer
23 otherwise obtains knowledge of fact, he or she or one of his or
24 her assistants shall:

25 (1) Make investigation of the case; and

26 (2) Furnish information and assistance that the court or judge
27 may require.

§49-4-720. Prohibition on committing juveniles to adult facilities;
copy provided to juvenile.

1 (a) No juvenile, including one who has been transferred to
2 criminal jurisdiction of the court, shall be detained or confined
3 in any institution in which he or she has contact with or comes
4 within sight or sound of any adult persons incarcerated because
5 they have been convicted of a crime or are awaiting trial on
6 criminal charges or with the security staff (including
7 management) or direct-care staff of a jail or locked facility for
8 adults.

9 (b) No child who has been convicted of an offense under the
10 adult jurisdiction of the circuit court shall be held in custody in
11 a correctional facility of this state. The Division of Juvenile
12 Services shall be responsible for notifying the sentencing court
13 within forty-five days of the child's eighteenth birthday that the
14 child will be turning eighteen years of age. Within ten days of
15 the child's eighteenth birthday, the court shall transfer the
16 offender to an adult correctional facility or to any other
17 disposition the court deems appropriate for adult offenders.
18 Notwithstanding any other provision of this code to the contrary,
19 prior to the transfer the child shall be returned to the sentencing
20 court for the purpose of reconsideration and modification of the
21 imposed sentence, which shall be based upon a review of all
22 records and relevant information relating to the child's
23 rehabilitation since his or her conviction under the adult
24 jurisdiction of the court.

§49-4-721. Rules governing juvenile facilities; rights of juveniles.

1 (a) The Director of the Division of Juvenile Services within
2 the Department of Military Affairs and Public Safety shall

3 propose legislative rules for promulgation in accordance with
4 article three, chapter twenty-nine-a of this code, outlining
5 policies and procedures governing the operation of those
6 correctional, detention, predispositional detention centers and
7 other facilities wherein juveniles may be housed. These policies
8 and procedures shall include, but are not limited to, standards of
9 cleanliness, temperature and lighting; availability of medical and
10 dental care; provision of food, furnishings, clothing and toilet
11 articles; supervision; procedures for enforcing rules of conduct
12 consistent with due process of law; and visitation privileges. A
13 juvenile in custody or detention has, at a minimum, the
14 following rights, and the policies prescribed ensuring that:

15 (1) A juvenile may not be punished by physical force,
16 deprivation of nutritious meals, deprivation of family visits or
17 imposition of solitary confinement;

18 (2) A juvenile shall be afforded an opportunity to participate
19 in physical exercise each day;

20 (3) Except for sleeping hours, a juvenile in a state facility
21 may not be locked alone in a room unless that juvenile is not
22 amenable to reasonable direction and control;

23 (4) A juvenile shall be provided with his or her own clothing
24 or individualized clothing which is clean and supplied by the
25 facility, and shall also be afforded daily access to showers;

26 (5) A juvenile shall be afforded constant access to writing
27 materials and may send mail without limitation, censorship or
28 prior reading, and may receive mail without prior reading, except
29 that mail may be opened in the juvenile's presence, without
30 being read, to inspect for contraband;

31 (6) A juvenile may make and receive regular local phone
32 calls without charge and long distance calls to his or her family
33 without charge at least once a week, and receive visitors daily
34 and on a regular basis;

35 (7) A juvenile shall be afforded immediate access to medical
36 care as needed;

37 (8) A juvenile in a juvenile detention facility or juvenile
38 corrections facility shall be provided access to education,
39 including teaching, educational materials and books;

40 (9) A juvenile shall be afforded reasonable access to an
41 attorney upon request; and

42 (10) A juvenile shall be afforded a grievance procedure,
43 including an appeal mechanism.

44 (b) Upon admission to a detention facility or juvenile
45 corrections facility, a juvenile shall be furnished with a copy of
46 the rights provided him or her by virtue of this section and as
47 further prescribed by rules proposed and promulgated pursuant
48 to this section.

§49-4-722. Conviction for offense while in custody.

1 (a) Notwithstanding any other provision of law to the
2 contrary, any person who is eighteen years of age or older who
3 is convicted as an adult of an offense that he or she committed
4 while in the custody of the Division of Juvenile Services and
5 who is therefor sentenced to a regional jail or state correctional
6 facility for the offense may not be returned to the custody of the
7 division upon the completion of his or her adult sentence until a
8 hearing is held before the court which committed the person to
9 the custody of the Division of Juvenile Services at which hearing
10 the division may present any objections it may have to return the
11 person to its custody. If the division does object and the court

12 overrules the division's objections, it shall make specific written
13 findings as to its rationale for overruling the objections.

14 (b) No person who is eighteen years of age or older who is
15 convicted as an adult of a felony crime of violence against the
16 person while in the custody of the Division of Juvenile Services
17 be returned to the custody of the Division of Juvenile Services
18 upon completion of his or her adult sentence.

§49-4-723. Discrimination prohibited; penalties; damages.

1 (a) No individual, firm, corporation or other entity may
2 discriminate against any person in any manner due to that
3 person's prior involvement in a proceeding under this article if
4 that person's records have been expunged pursuant to this
5 article. This includes, but is not limited to, discrimination
6 relating to employment, housing, education, obtaining credit, and
7 contractual rights.

8 (b) Any person who willfully violates this section is guilty
9 of a misdemeanor and, upon conviction, shall be fined not more
10 than \$1,000, or confined in jail for not more than six months, or
11 both fined and confined. Additionally, a person who violates this

12 section is liable to the person who has been discriminated against
13 for damages in the amount of \$300 or the actual amount of
14 damages, whichever is greater.

PART VIII. SUPPORT AND SUPPORT ORDERS.

§49-4-801. Support of a child removed from home pursuant to this chapter; order requirements.

1 (a) It is the intent of the Legislature that to the extent
2 practicable, this article should encourage and require a child's
3 parents to meet the obligation of providing that child with
4 adequate food, shelter, clothing, education, and health and child
5 care.

6 (b) This article shall be construed to be consistent with
7 articles one, eleven, twelve, thirteen, fourteen, fifteen, sixteen,
8 eighteen, nineteen and twenty four of chapter forty-eight of this
9 code, and those articles apply to actions pursuant to this chapter
10 unless expressly stated otherwise.

11 (c) When a child is removed from his or her home pursuant
12 to this chapter, the court shall issue a support order payable by
13 the child's mother. If the child's legal father has been
14 determined, the court shall issue a child support order payable by

15 the legal father. If no legal father has been determined, the court
16 shall issue an order establishing paternity prior to or
17 simultaneously with establishing a support order payable by the
18 child's legal father. Copies of the orders shall be provided to the
19 Department of Health and Human Resources, Bureau of Child
20 Support Enforcement.

21 (d) The order establishing a child support obligation must
22 use the Guidelines for Child Support Awards that are set forth in
23 article thirteen, chapter forty-eight of this code.

24 (e) In addition to the reasons for deviation listed in section
25 seven hundred two, article thirteen, chapter forty-eight of this
26 code, deviation from the child support guidelines is appropriate
27 when the court finds that:

28 (1) It may assist the parent in successful completion of an
29 improvement period;

30 (2) It may be in the best interest of the minor child to issue
31 a zero child support order; and/or

32 (3) The parent temporarily or permanently has no gross
33 income as defined in section two hundred twenty eight, article
34 one, chapter forty-eight of this code.

§49-4-802. General provisions for support orders; contempt.

1 (a) Any pre-existing support order from any other court or
2 administrative agency with authority to issue a support order
3 shall remain in full force and effect until a superseding order is
4 issued.

5 (b) If a child is returned to the physical custody of a parent,
6 that parent is not responsible for paying child support for the
7 duration of time that parent has physical custody of the child
8 without the necessity of entry of another court order terminating
9 that parent's child support obligation.

10 (c) If the action is dismissed for failure to prove the
11 allegations of abuse or neglect, any support provision issued
12 pursuant to this chapter are void ab initio. Any adjudication of
13 paternity shall remain in full force and effect.

14 (d) The support obligation shall automatically continue
15 beyond the termination of the payor's parental rights, unless the
16 support obligation is explicitly ended in an order.

§49-4-803. Enforcement of support orders.

1 (a) Support orders may be enforced through any manner
2 provided in chapters thirty-eight and forty-eight of this code.

3 **(b) An action for contempt for nonpayment of support may**
4 **be brought by the Department of Health and Human Resources,**
5 **Bureau for Children and Families or Bureau for Child Support**
6 **Enforcement; the child's physical custodian; the child's guardian**
7 **ad litem; or the prosecuting attorney.**

PART IX. CONTRIBUTING TO THE

DELINQUENCY OF A CHILD.

§49-4-901. Contributing to delinquency or neglect of a child;
penalties; payment of medical costs; proof; court
discretion; other payments; suspended sentence;
maintenance and care; temporary custody.

1 **(a) A person who by any act or omission contributes to,**
2 **encourages or tends to cause the delinquency or neglect of any**
3 **child, including, but not limited to, aiding or encouraging the**
4 **child to habitually or continually refuse to respond, without just**
5 **cause, to the lawful supervision of the child's parents, guardian**
6 **or custodian or to be habitually absent from school without just**
7 **cause, is guilty of a misdemeanor and, upon conviction thereof,**
8 **shall be fined not less than \$50 nor more than \$500, or confined**
9 **in jail for a period not exceeding one year, or both fined and**
10 **confined.**

11 (b) In addition to any penalty provided under this section and
12 any restitution which may be ordered by the court under article
13 eleven-a, chapter sixty-one of this code, the court may order any
14 person convicted under this section to pay all or any portion of
15 the cost of medical, psychological or psychiatric treatment of the
16 child resulting from the act or acts for which the person is
17 convicted, whether or not the child is considered to have
18 sustained bodily injury.

19 (c) This section does not apply to any parent, guardian or
20 custodian who fails or refuses, or allows another person to fail or
21 refuse, to supply a child under the care, custody or control of the
22 parent, guardian or custodian with necessary medical care, when
23 medical care conflicts with the tenets and practices of a
24 recognized religious denomination or order of which parent,
25 guardian or custodian is an adherent or member.

26 (d) In finding a person guilty of contributing to the
27 delinquency of a child, it is not necessary to prove that the child
28 has actually become delinquent, if it appears from the evidence
29 that the accused is guilty of conduct or of an act of neglect or

30 omission of duty on his or her part toward the child which would
31 tend to bring about or to encourage the delinquency.

32 (e) A court or judge, upon convictions as are imposed in
33 accordance with this chapter, may:

34 (1) Suspend the sentence of a person found guilty of
35 contributing to the delinquency of a child;

36 (2) Stay or postpone the enforcement of execution of
37 sentence; or

38 (3) Release the person from custody.

39 (f) If the sentence of the person found guilty is suspended,
40 the court or judge may make it a condition of suspending
41 sentence that the person pay for whatever treatment and care
42 may be required for the welfare of the child, and for its support
43 and maintenance while in the custody of the department, person,
44 or institution, and any other expense that may have resulted
45 from, or be necessary because of, the act or acts of the person
46 found guilty.

47 (g) The conditions upon which the sentence of a person
48 found guilty of contributing to the delinquency, or to the neglect

49 of any child, may be suspended, may include the furnishing of a
50 good and sufficient bond to the State of West Virginia in the
51 penal sum as the court shall determine, not exceeding \$1,000,
52 conditioned upon:

53 (1) Furnishing whatever treatment and care may be required
54 for the welfare of the child;

55 (2) Doing whatever may be calculated to secure obedience
56 to the law or to remove the cause of delinquency, or neglect; and

57 (3) Payment of the amount as the court may order, not
58 exceeding \$20 per month, for the support, care, and maintenance
59 of the child to whose delinquency the person contributed. The
60 sum shall be expended under the order of the court or judge for
61 the purposes enumerated.

62 (h)(1) The penalty of a bond given upon suspension of
63 sentence which becomes forfeited is recoverable without
64 separate suit. The court or judge may cause citation or summons
65 to issue to the principal and surety, requiring that they appear at
66 a time named by the court or judge, not less than ten nor more
67 than twenty days from the issuance of the summons, and show

68 cause why judgment should not be entered for the penalty of the
69 bond and execution issued against the property of the principal
70 and of the surety. Upon failure to appear, or failure to show
71 sufficient cause, the court shall enter judgment in behalf of the
72 State of West Virginia against the principal and surety in an
73 amount not to exceed the penalty of the bond plus costs.

74 (2) Any money collected or paid upon an execution, or upon
75 the bond, shall be deposited with the clerk of the court in which
76 the bond was given. The money shall be applied first to the
77 payment of all court costs and then to the treatment, care, or
78 maintenance of the child for whose delinquency conviction was
79 had. If any money so collected is not required for these purposes,
80 it shall be paid within one year into the State Treasury.

81 (i) If it appear to the satisfaction of the court or judge at any
82 time while a suspension of sentence or stay of execution remains
83 in effect, that the sentence ought to be enforced, the court or
84 judge may enforce the sentence. A jail sentence shall commence
85 from the date upon which the sentence is so ordered to be
86 enforced.

87 (j) If the conditions of suspension are complied with, the
88 sentence shall remain suspended, subject to enforcement upon
89 the violation of any of the conditions imposed. Upon a failure to
90 comply with any of the conditions imposed, the sentence shall be
91 enforced and any bond given to insure the performance of the
92 conditions shall be forfeited.

93 (k) A sentence may not be suspended, or final judgment or
94 execution stayed, for a period exceeding two years. At the end of
95 two years from the time of imposition of sentence or sooner in
96 the discretion of the court or judge, the defendant shall be finally
97 released and discharged.

98 (l) Where a person is found guilty of contributing to the
99 delinquency of a child, the court or judge may place the child in
100 the temporary custody of the department or of some responsible
101 person or approved institution.

§49-4-902. Custody of child by convicted person.

1 If the guilty person had custody of the child prior to
2 conviction, the court or judge may, on suspending sentence,
3 permit the child to remain in the custody of the person, and make

4 it a condition of suspending sentence that the person provides
5 whatever treatment and care may be required for the welfare of
6 the child, and shall do whatever may be calculated to secure
7 obedience to the law or to remove the cause of the delinquency.

§49-4-903. Interference with disposition of child punishable as contempt of court.

1 A person who interferes with the direction of disposition of
2 a child in accordance with an order of the court or judge made in
3 pursuance of this chapter, or with the department, or a probation
4 or other officer of the court in carrying out the directions of the
5 court or judge under an order, is subject to punishment as for
6 contempt of court.

§49-4-904. Enticing child from custody; penalties.

1 A person who personally or by agent entices or forcibly
2 removes a child from a custody in which the child was placed
3 under this chapter is guilty of a misdemeanor and, upon
4 conviction shall be fined not more than \$100, or confined in jail
5 not more than six months, or fined and confined.

ARTICLE 5. RECORD KEEPING AND DATABASE.

§49-5-101. Confidentiality of records; nonrelease of records; exceptions; penalties.

1 (a) Except as otherwise provided in this chapter or by order
2 of the court, all records and information concerning a child or
3 juvenile which are maintained by the Division of Juvenile
4 Services, the Department of Health and Human Resources, a
5 child agency or facility, court or law-enforcement agency is
6 confidential and shall not be released or disclosed to anyone,
7 including any federal or state agency.

8 (b) Notwithstanding the provisions of subsection (a) of this
9 section or any other provision of this code to the contrary,
10 records concerning a child or juvenile, except adoption records
11 and records disclosing the identity of a person making a
12 complaint of child abuse or neglect may be made available:

13 (1) Where otherwise authorized by this chapter;

14 (2) To:

15 (A) The child;

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

17 or

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

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

21 (4) Pursuant to an order of a court of record. However, the
22 court shall review the record or records for relevancy and
23 materiality to the issues in the proceeding and safety, and may
24 issue an order to limit the examination and use of the records or
25 any part thereof.

26 (c) In addition to those persons or entities to whom
27 information may be disclosed under subsection (b) of this
28 section, information related to child abuse or neglect
29 proceedings, except information relating to the identity of the
30 person reporting or making a complaint of child abuse or
31 neglect, shall be made available, upon request, to:

32 (1) Federal, state or local government entities, or any agent
33 of those entities, including law-enforcement agencies and
34 prosecuting attorneys, having a need for that information in
35 order to carry out its responsibilities under law to protect
36 children from abuse and neglect;

- 37 (2) The child fatality review team;
38 (3) Child abuse citizen review panels;
39 (4) Multidisciplinary investigative and treatment teams; or
40 (5) A grand jury, circuit court or family court, upon a finding
41 that information in the records is necessary for the determination
42 of an issue before the grand jury, circuit court or family court.
- 43 (d) In the event of a child fatality or near fatality due to child
44 abuse and neglect, information relating to a fatality or near
45 fatality shall be made public by the Department of Health and
46 Human Resources and to the entities described in subsection (c)
47 of this section, all under the circumstances described in that
48 subsection. However, information released by the Department of
49 Health and Human Resources pursuant to this subsection may
50 not include the identity of a person reporting or making a
51 complaint of child abuse or neglect. For purposes of this
52 subsection, “near fatality” means any medical condition of the
53 child which is certified by the attending physician to be life
54 threatening.

55 (e) Except in juvenile proceedings which are transferred to
56 criminal proceedings, law-enforcement records and files
57 concerning a child or juvenile shall be kept separate from the
58 records and files of adults and not included within the court files.
59 Law-enforcement records and files concerning a child or
60 juvenile shall only be open to inspection pursuant to section one
61 hundred three of this article.

62 (f) Any person who willfully violates this section is guilty of
63 a misdemeanor and, upon conviction, shall be fined not more
64 than \$1,000, or confined in jail for not more than six months, or
65 both fined and confined. A person convicted of violating this
66 section is also liable for damages in the amount of \$300 or actual
67 damages, whichever is greater.

68 (g) Notwithstanding the provisions of this section, or any
69 other provision of this code to the contrary, the name and
70 identity of any juvenile adjudicated or convicted of a violent or
71 felonious crime shall be made available to the public;

72 (h)(1) Notwithstanding the provisions of this section, or any
73 other provision of this code to the contrary, the Division of

74 Juvenile Services may provide access to and the confidential use
75 of a treatment plan, court records or other records of a juvenile
76 to an agency in another state which:

77 (A) Performs the same functions in that state that are
78 performed by the Division of Juvenile Services in this state;

79 (B) Has a reciprocal agreement with this state; and

80 (C) Has legal custody of the juvenile.

81 (2) A record which is shared under this subsection may only
82 provide information which is relevant to the supervision, care,
83 custody and treatment of the juvenile.

84 (3) The Division of Juvenile Services is authorized to enter
85 into reciprocal agreements with other states and to propose rules
86 for legislative approval in accordance with article three, chapter
87 twenty-nine-a of this code to implement this subsection.

88 (4) Other than the authorization explicitly given in this
89 subsection, this subsection may not be construed to enlarge or
90 restrict access to juvenile records as provided elsewhere in this
91 code.

§49-5-102. Preservation of records.

1 The proceedings, records, reports, case histories, and all
2 other papers or documents of or received by the state department
3 in the administration of this chapter shall be filed of record and
4 preserved.

§49-5-103. Confidentiality of juvenile records; permissible disclosures; conditions; penalties; damages.

1 (a) Any findings or orders of the court in a juvenile
2 proceeding shall be known as the “juvenile record” and shall be
3 maintained by the clerk of the court.

4 (b) Records of a juvenile proceeding conducted under this
5 chapter are not public records and shall not be disclosed to
6 anyone unless disclosure is otherwise authorized by this section.

7 (c) Notwithstanding the provisions of subsection (a) of this
8 section, a copy of a juvenile’s records shall automatically be
9 disclosed to certain school officials, subject to the following
10 terms and conditions:

11 (1) Only the records of certain juveniles shall be disclosed.
12 These include, and are limited to, cases in which:

13 (A) The juvenile has been charged with an offense which:

- 14 (i) Involves violence against another person;
15 (ii) Involves possession of a dangerous or deadly weapon; or
16 (iii) Involves possession or delivery of a controlled
17 substance as that term is defined in section one hundred one,
18 article one, chapter sixty-a of this code; and
19 (B) The juvenile's case has proceeded to a point where one
20 or more of the following has occurred:
21 (i) A circuit court judge or magistrate has determined that
22 there is probable cause to believe that the juvenile committed the
23 offense as charged;
24 (ii) A circuit court judge or magistrate has placed the
25 juvenile on probation for the offense;
26 (iii) A circuit court judge or magistrate has placed the
27 juvenile into an pre-adjudicatory community supervision period
28 in accordance with section seven hundred eight, article four of
29 this chapter; or
30 (iv) Some other type of disposition has been made of the
31 case other than dismissal.
32 (2) The circuit court for each judicial circuit in West
33 Virginia shall designate one person to supervise the disclosure
34 of juvenile records to certain school officials;

35 (3) If the juvenile attends a West Virginia public school, the
36 person designated by the circuit court shall automatically
37 disclose all records of the juvenile's case to the county
38 superintendent of schools in the county in which the juvenile
39 attends school and to the principal of the school which the
40 juvenile attends, subject to the following:

41 (A) At a minimum, the records shall disclose the following
42 information:

43 (i) Copies of the arrest report;

44 (ii) Copies of all investigations;

45 (iii) Copies of any psychological test results and any mental
46 health records;

47 (iv) Copies of any evaluation reports for probation or facility
48 placement; and

49 (v) Any other material that would alert the school to
50 potential danger that the juvenile may pose to himself, herself or
51 others;

52 (B) The disclosure of the juvenile's psychological test results
53 and any mental health records may only be made in accordance
54 with subdivision (14) of this subsection;

55 (C) If the disclosure of any record to be automatically
56 disclosed under this section is restricted in its disclosure by the
57 Health Insurance Portability and Accountability Act of 1996, PL
58 104-191, and any amendments and regulations under the act, the
59 person designated by the circuit court shall provide the
60 superintendent and principal any notice of the existence of the
61 record that is permissible under the act and, if applicable, any
62 action that is required to obtain the record; and

63 (D) When multiple disclosures are required by this
64 subsection, the person designated by the circuit court is required
65 to disclose only material in the juvenile record that had not
66 previously been disclosed to the county superintendent and the
67 principal of the school which the juvenile attends.

68 (4) If the juvenile attends a private school in West Virginia,
69 the person designated by the circuit court shall determine the
70 identity of the highest ranking person at that school and shall
71 automatically disclose all records of a juvenile's case to that
72 person.

73 (5) If the juvenile does not attend school at the time the
74 juvenile's case is pending, the person designated by the circuit

75 court may not transmit the juvenile's records to any school.
76 However, the person designated by the circuit court shall
77 transmit the juvenile's records to any school in West Virginia
78 which the juvenile subsequently attends.

79 (6) The person designated by the circuit court may not
80 automatically transmit juvenile records to a school which is not
81 located in West Virginia. Instead, the person designated by the
82 circuit court shall contact the out-of-state school, inform it that
83 juvenile records exist and make an inquiry regarding whether the
84 laws of that state permit the disclosure of juvenile records. If so,
85 the person designated by the circuit court shall consult with the
86 circuit judge who presided over the case to determine whether
87 the juvenile records should be disclosed to the out-of-state
88 school. The circuit judge has discretion in determining whether
89 to disclose the juvenile records and shall consider whether the
90 other state's law regarding disclosure provides for sufficient
91 confidentiality of juvenile records, using this section as a guide.
92 If the circuit judge orders the juvenile records to be disclosed,
93 they shall be disclosed in accordance with subdivision (7) of this
94 subsection.

195 (7) The person designated by the circuit court shall transmit
196 the juvenile's records to the appropriate school official under
197 cover of a letter emphasizing the confidentiality of those records
198 and directing the official to consult this section of the code. A
199 copy of this section of the code shall be transmitted with the
200 juvenile's records and cover letter.

201 (8) Juvenile records are absolutely confidential by the school
202 official to whom they are transmitted, and nothing contained
203 within the juvenile's records may be noted on the juvenile's
204 permanent educational record. The juvenile records are to be
205 maintained in a secure location and are not to be copied under
206 any circumstances. However, the principal of a school to whom
207 the records are transmitted shall have the duty to disclose the
208 contents of those records to any teacher who teaches a class in
209 which the subject juvenile is enrolled and to the regular driver of
210 a school bus in which the subject juvenile is regularly
211 transported to or from school, except that the disclosure of the
212 juvenile's psychological test results and any mental health
213 records may only be made in accordance with subdivision (14)

114 of this subsection. Furthermore, any school official to whom the
115 juvenile's records are transmitted may disclose the contents of
116 those records to any adult within the school system who, in the
117 discretion of the school official, has the need to be aware of the
118 contents of those records.

119 (9) If for any reason a juvenile ceases to attend a school
120 which possesses that juvenile's records, the appropriate official
121 at that school shall seal the records and return them to the circuit
122 court which sent them to that school. If the juvenile has changed
123 schools for any reason, the former school shall inform the circuit
124 court of the name and location of the new school which the
125 juvenile attends or will be attending. If the new school is located
126 within West Virginia, the person designated by the circuit court
127 shall forward the juvenile's records to the juvenile's new school
128 in the same manner as provided in subdivision (7) of this
129 subsection. If the new school is not located within West
130 Virginia, the person designated by the circuit court shall handle
131 the juvenile records in accordance with subdivision (6) of this
132 subsection.

133 If the juvenile has been found not guilty of an offense for
134 which records were previously forwarded to the juvenile's
135 school on the basis of a finding of probable cause, the circuit
136 court may not forward those records to the juvenile's new
137 school. However, this does not affect records related to other
138 prior or future offenses. If the juvenile has graduated or quit
139 school or will otherwise not be attending another school, the
140 circuit court shall retain the juvenile's records and handle them
141 as otherwise provided in this article.

142 (10) Under no circumstances may one school transmit a
143 juvenile's records to another school.

144 (11) Under no circumstances may juvenile records be
145 automatically transmitted to a college, university or other
146 post-secondary school.

147 (12) No one may suffer any penalty, civil or criminal, for
148 accidentally or negligently attributing certain juvenile records to
149 the wrong person. However, that person has the affirmative duty
150 to promptly correct any mistake that he or she has made in
151 disclosing juvenile records when the mistake is brought to his or

152 her attention. A person who intentionally attributes false
153 information to a certain person shall be subjected to both
154 criminal and civil penalties in accordance with subsection (e) of
155 this section.

156 (13) If a circuit court judge or magistrate has determined that
157 there is probable cause to believe that a juvenile has committed
158 an offense but there has been no final adjudication of the charge,
159 the records which are transmitted by the circuit court shall be
160 accompanied by a notice which clearly states in bold print that
161 there has been no determination of delinquency and that our
162 legal system requires a presumption of innocence.

163 (14) The county superintendent shall designate the school
164 psychologist or psychologists to receive the juvenile's
165 psychological test results and any mental health records. The
166 psychologist designated shall review the juvenile's
167 psychological test results and any mental health records and, in
168 the psychologist's professional judgment, may disclose to the
169 principal of the school that the juvenile attends and other school
170 employees who would have a need to know the psychological

171 test results, mental health records and any behavior that may
172 trigger violence or other disruptive behavior by the juvenile.
173 Other school employees include, but are not limited to, any
174 teacher who teaches a class in which the subject juvenile is
175 enrolled and the regular driver of a school bus in which the
176 subject juvenile is regularly transported to or from school.

177 (c) Notwithstanding the provisions of subsection (a) of this
178 section, juvenile records may be disclosed, subject to the
179 following terms and conditions:

180 (1) If a juvenile case is transferred to the criminal
181 jurisdiction of the circuit court pursuant to subsection (c) or (d),
182 section seven hundred ten, article four of this chapter, the
183 juvenile records are open to public inspection.

184 (2) If a juvenile case is transferred to the criminal
185 jurisdiction of the circuit court pursuant to subsection (e), (f) or
186 (g), section seven hundred ten, article four of this chapter, the
187 juvenile records are open to public inspection only if the juvenile
188 fails to file a timely appeal of the transfer order, or the Supreme
189 Court of Appeals refuses to hear or denies an appeal which has
190 been timely filed.

191 (3) If a juvenile is fourteen years of age or older and a court
192 has determined there is a probable cause to believe the juvenile
193 committed an offense set forth in subsection (g), section seven
194 hundred ten of article four of this chapter, but the case is not
195 transferred to criminal jurisdiction, the juvenile records are open
196 to public inspection pending trial only if the juvenile is released
197 on bond and no longer detained or adjudicated delinquent of the
198 offense.

199 (4) If a juvenile is younger than fourteen years of age and a
200 court has determined there is probable cause to believe that the
201 juvenile committed the crime of murder under section one, two
202 or three, article two, chapter sixty-one of this code, or the crime
203 of sexual assault in the first degree under section three, article
204 eight-b of chapter sixty-one, but the case is not transferred to
205 criminal jurisdiction, the juvenile records are open to public
206 inspection pending trial only if the juvenile is released on bond
207 and no longer detained or adjudicated delinquent of the offense.

208 (5) Upon a written petition and pursuant to a written order,
209 the circuit court may permit disclosure of juvenile records to:

210 (A) A court, in this state or another state, which has juvenile
211 jurisdiction and has the juvenile before it in a juvenile
212 proceeding;

213 (B) A court, in this state or another state, exercising criminal
214 jurisdiction over the juvenile which requests records for the
215 purpose of a presentence report or disposition proceeding;

216 (C) The juvenile, the juvenile's parents or legal guardian, or
217 the juvenile's counsel;

218 (D) The officials of a public institution to which the juvenile
219 is committed if they require those records for transfer, parole or
220 discharge; or

221 (E) A person who is conducting research. However, juvenile
222 records may be disclosed for research purposes only upon the
223 condition that information which would identify the subject
224 juvenile or the juvenile's family may not be disclosed.

225 (6) Notwithstanding any other provision of this code,
226 juvenile records shall be disclosed, or copies made available, to
227 a probation officer upon his or her request. Any probation officer
228 may access relevant juvenile case information contained in any

229 electronic database maintained by or for the Supreme Court of
230 Appeals and share it with any other probation officer.

231 (7) Notwithstanding any other provision of this code,
232 juvenile records shall be disclosed, or copies made available, in
233 response to any lawfully issued subpoena from a federal court or
234 federal agency.

235 (d) Any records open to public inspection pursuant to this
236 section are subject to the same requirements governing the
237 disclosure of adult criminal records.

238 (e) Any person who willfully violates this section is guilty
239 of a misdemeanor and, upon conviction, shall be fined not more
240 than \$1,000, or confined in jail for not more than six months, or
241 both fined and confined. A person who violates this section is
242 also liable for damages in the amount of \$300 or actual damages,
243 whichever is greater.

**§49-5-104. Confidentiality of juvenile records for children who
become of age while a ward of the state or who have
been transferred to adult criminal jurisdiction;
separate and secure location; penalties; damages.**

1 (a) One year after the juvenile's eighteenth birthday, or one
2 year after personal or juvenile jurisdiction has terminated,

3 whichever is later, the records of a juvenile proceeding
4 conducted under this chapter, including, but not limited to,
5 law-enforcement files and records, may be kept in a separate
6 secure confidential place and the records may not be inspected
7 except by order of the circuit court.

8 **(b)** The records of a juvenile proceeding in which a juvenile
9 was transferred to criminal jurisdiction pursuant to section seven
10 hundred ten, article four of this chapter shall be kept in a
11 separate secure confidential place and the records may not be
12 inspected except by order of the circuit court if the juvenile is
13 subsequently acquitted or found guilty only of an offense other
14 than an offense upon which the waiver or order of transfer was
15 based, or if the offense upon which the waiver or order of
16 transfer was based is subsequently dismissed.

17 **(c)** To keep the confidentiality of juvenile records, they shall
18 be returned to the circuit court in which the case was pending
19 and be kept in a separate confidential file. The records shall be
20 physically marked to show that they are to remain confidential
21 and shall be securely kept and filed in a manner so that no one

22 can have access to determine the identity of the juvenile, except
23 upon order of the circuit court.

24 (d) Marking the juvenile records to show they are to remain
25 confidential has the legal effect of extinguishing the offense as
26 if it never occurred.

27 (e) The records of a juvenile convicted under the criminal
28 jurisdiction of the circuit court pursuant to subdivision (1),
29 subsection (d), section seven hundred ten, article four of this
30 chapter may not be marked and kept as confidential.

31 (f) Any person who willfully violates this section is guilty of
32 a misdemeanor and, upon conviction thereof, shall be fined not
33 more than \$1,000, or confined in jail for not more than six
34 months, or both so fined and confined, and is liable for damages
35 in the amount of \$300 or actual damages, whichever is greater.

§49-5-105. Juvenile justice database; individual records confidential.

1 The West Virginia Supreme Court of Appeals is responsible
2 for collecting, compiling and disseminating information in the
3 juvenile justice database. Notwithstanding any other provision
4 of this code to the contrary, the court shall grant the Division of

5 Justice and Community Services access to confidential juvenile
6 records for the limited purpose of the collection and analysis of
7 statistical data. However, the division shall keep the records
8 confidential and not publish any information that would identify
9 any individual juvenile.

ARTICLE 6. MISSING CHILDREN INFORMATION ACT.

§49-6-101. Clearinghouse function; State Police requirements; rule-making.

1 (a) The Missing Children Information Clearinghouse is
2 established under the West Virginia State Police. The State
3 Police:

4 (1) Shall provide for the administration of the clearinghouse;
5 and

6 (2) May promulgate rules in accordance with article three,
7 chapter twenty-nine-a of this code to carry out the provisions of
8 this article.

9 (b) The clearinghouse is a central repository of information
10 on missing children and shall be used by all law-enforcement
11 agencies in this state.

12 (c) The clearinghouse shall:

13 (1) Establish a system of intrastate communication of
14 information relating to missing children;

15 (2) Provide a centralized file for the exchange of information
16 on missing children and unidentified bodies of children within
17 the state;

18 (3) Communicate with the National Crime Information
19 Center for the exchange of information on missing children
20 suspected of interstate travel;

21 (4) Collect, process, maintain and disseminate accurate and
22 complete information on missing children;

23 (5) Provide a statewide toll-free telephone line for the
24 reporting of missing children and for receiving information on
25 missing children;

26 (6) Disseminate to custodians, law-enforcement agencies,
27 the state Department of Education, the Bureau for Children and
28 Families and the general public information that explains how to
29 prevent child abduction and what to do if a child becomes
30 missing;

31 (7) Compile statistics relating to the incidence of missing
32 children within the state;

33 (8) Provide training materials and technical assistance to
34 law-enforcement agencies and social services agencies
35 pertaining to missing children; and

36 (9) Establish a media protocol for disseminating information
37 pertaining to missing children.

38 (d) The clearinghouse shall print and distribute posters,
39 flyers and other forms of information containing descriptions of
40 missing children.

41 (e) The State Police may accept public or private grants,
42 gifts and donations to assist in carrying out the provisions of this
43 article.

**§49-6-102. State Department of Education; missing children
program; rule-making.**

1 (a) The State Department of Education shall develop and
2 administer a program for the location of missing children who
3 may be enrolled in the West Virginia school system, including
4 private schools, and for the reporting of children who may be
5 missing or who may be unlawfully removed from schools.

6 (b) The program shall include the use of information
7 received from the clearinghouse and shall be coordinated with
8 the operations of the clearinghouse.

9 (c) The State Board of Education may promulgate rules in
10 accordance with article three, chapter twenty-nine-a of this code
11 for the operation of the program and shall require the
12 participation of all school districts and state-accredited private
13 schools in this state.

§49-6-103. Information to clearinghouse.

1 Every law-enforcement agency in West Virginia shall
2 provide to the clearinghouse any information the
3 law-enforcement agency has that would assist in locating or
4 identifying a missing child.

§49-6-104. Custodian request for information.

1 (a) Upon written request made to a law-enforcement agency
2 by the custodian of a missing child, the law-enforcement agency
3 shall request from the clearinghouse information concerning the
4 child that may aid the custodian in locating or identifying the
5 child.

6 (b) A law-enforcement agency to which a request has been
7 made pursuant to subsection (a) of this section shall report to the
8 custodian on the results of its inquiry within fourteen calendar

9 days after the day the written request is received by the
10 law-enforcement agency.

§49-6-105. Missing child report forms; where filed.

1 (a) The clearinghouse shall distribute missing child report
2 forms to law-enforcement agencies in the state.

3 (b) A missing child report may be made to a
4 law-enforcement agency in person or by telephone or other
5 indirect method of communication and the person taking the
6 report may enter the information on the form for the reporter. A
7 missing child report form may be completed by the reporter and
8 delivered to a law-enforcement office.

9 (c) A copy of the missing child report form shall be filed
10 with the clearinghouse.

§49-6-106. Missing child reports; law-enforcement agency requirements; unidentified bodies.

1 (a) A law-enforcement agency, upon receiving a missing
2 child report, shall:

3 (1) Immediately start an investigation to determine the
4 present location of the child if it determines that the child is in
5 danger; and

6 (2) Enter the name of the missing child into the
7 clearinghouse and the national crime information center missing
8 person file if the child meets the center's criteria, with all
9 available identifying features, including dental records,
10 fingerprints, other physical characteristics and a description of
11 the clothing worn when the missing child was last seen.

12 (b) Information not immediately available shall be obtained
13 as soon as possible by the law-enforcement agency and entered
14 into the clearinghouse and the national crime information center
15 file as a supplement to the original entry.

16 (c) All West Virginia law-enforcement agencies shall enter
17 information about all unidentified bodies of children found in
18 their jurisdiction into the clearinghouse and the national crime
19 information center unidentified person file, including all
20 available identifying features of the body and a description of the
21 clothing found on the body. If an information entry into the
22 national crime information center file results in an automatic
23 entry of the information into the clearinghouse, the

24 law-enforcement agency is not required to make a direct entry of
25 that information into the clearinghouse.

§49-6-107. Release of dental records; cause shown; immunity.

1 (a) At the time a missing child report is made, the
2 law-enforcement agency to which the missing child report is
3 given may, when feasible and appropriate, provide a dental
4 record release form to the parent, custodian, health care
5 surrogate or other legal entity authorized to release the dental
6 records of the missing child. The law-enforcement agency shall
7 endorse the dental record release form with a notation that a
8 missing child report has been made in compliance with this
9 article. When the dental record release form is properly
10 completed by the parent, custodian, health care surrogate or
11 other legal entity authorized to release the dental records of the
12 missing child and contains the endorsement, the form is
13 sufficient to permit a dentist or physician in this state to release
14 dental records relating to the missing child to the
15 law-enforcement agency.

16 (b) A circuit court judge may for good cause shown
17 authorize the release of dental records of a missing child to a
18 law-enforcement agency.

19 (c) A law-enforcement agency which receives dental records
20 under subsection (a) or (b) of this section shall send the dental
21 records to the clearinghouse.

22 (d) A dentist or physician who releases dental records to a
23 person presenting a proper release executed or ordered pursuant
24 to this section is immune from civil liability or criminal
25 prosecution for the release of the dental records.

§49-6-108. Cross-checking and matching.

1 (a) The clearinghouse shall, in accordance with national
2 crime information center policies and procedures, cross-check
3 and attempt to match unidentified bodies with descriptions of
4 missing children. When the clearinghouse discovers a possible
5 match between an unidentified body and a missing child
6 description, the clearinghouse shall notify the appropriate
7 law-enforcement agencies.

8 (b) A law-enforcement agency that receives notice of a
9 possible match shall make arrangements for positive

10 identification. If a positive identification is made, the
11 law-enforcement agency shall complete and close the
12 investigation with notification to the clearinghouse.

§49-6-109. Interagency cooperation.

1 (a) State agencies and public and private schools shall
2 cooperate with a law-enforcement agency that is investigating a
3 missing child report and shall furnish any information, including
4 confidential information, that will assist the law-enforcement
5 agency in completing the investigation.

6 (b) Information provided by a state agency or a public or
7 private school may not be released to any person outside the
8 law-enforcement agency or the clearinghouse, except as
9 provided by rules of the West Virginia State Police.

§49-6-110. Confidentiality of records; rule-making; requirements.

1 (a) The State Police shall promulgate rules according to
2 article three, chapter twenty-nine-a of this code to provide for the
3 classification of information and records as confidential that:

4 (1) Are otherwise confidential under state or federal law or
5 rules promulgated pursuant to state or federal law;

6 (2) Are related to the investigation by a law-enforcement
7 agency of a missing child or an unidentified body, if the State
8 Police, in consultation with the law-enforcement agency,
9 determines that release of the information would be deleterious
10 to the investigation;

11 (3) Are records or notations that the clearinghouse maintains
12 for internal use in matters relating to missing children and
13 unidentified bodies and the State Police determines that release
14 of the internal documents might interfere with an investigation
15 by a law-enforcement agency in West Virginia or any other
16 jurisdiction; or

17 (4) Are records or information that the State Police
18 determines might interfere with an investigation or otherwise
19 harm a child or custodian.

20 (b) The rules may provide for the sharing of confidential
21 information with the custodian of the missing child.

§49-6-111. Attorney general to require compliance.

1 The Attorney General shall require each law-enforcement
2 agency to comply with the provisions of the Missing Children

- 3 Information Act and may seek writs of mandamus or other
- 4 appropriate remedies to enforce this article.

§49-6-112. Agencies to receive report; law-enforcement agency requirements.

- 1 (a) Upon completion of the missing child report the
- 2 law-enforcement agency shall immediately forward the contents
- 3 of the report to the missing children information clearinghouse
- 4 and the national crime information center's missing person file.
- 5 However, if an information entry into the national crime
- 6 information center file results in an automatic entry of the
- 7 information into the clearinghouse, the law-enforcement agency
- 8 is not required to make a direct entry of that information into the
- 9 clearinghouse.
- 10 (b) Within fifteen days after completion of the report, if the
- 11 child is less than thirteen years of age the law-enforcement
- 12 agency may, when appropriate, forward the contents of the
- 13 report to the last:
- 14 (1) Child care center or child care home in which the child
- 15 was enrolled; or
- 16 (2) School the child attended in West Virginia, if any.

17 (c) A law-enforcement agency involved in the investigation
18 of a missing child shall:

19 (1) Update the initial report filed by the agency that received
20 notification of the missing child upon the discovery of new
21 information concerning the investigation;

22 (2) Forward the updated report to the appropriate agencies
23 and organizations;

24 (3) Search the national crime information center's wanted
25 person file for reports of arrest warrants issued for persons who
26 allegedly abducted or unlawfully retained children and compare
27 these reports to the missing child's national crime information
28 center's missing person file; and

29 (4) Notify all law-enforcement agencies involved in the
30 investigation, the missing children information clearinghouse,
31 and the national crime information center when the missing child
32 is located.

§49-6-113. Clearinghouse Advisory Council; members, appointments and expenses; appointment, duties and compensation of director; annual reports.

1 (a) The Clearinghouse Advisory Council is continued as a
2 body corporate and politic, constituting a public corporation and

3 government instrumentality. The council shall consist of eleven
4 members, who are knowledgeable about and interested in issues
5 relating to missing or exploited children, as follows:

6 (1) Six members to be appointed by the Governor, with the
7 advice and consent of the Senate, with not more than four
8 belonging to the same political party, three being from different
9 congressional districts of the state and, as nearly as possible,
10 providing broad state geographical distribution of members of
11 the council, and at least one representing a nonprofit
12 organization involved with preventing the abduction, runaway or
13 exploitation of children or locating missing children;

14 (2) The Secretary of the Department of Health and Human
15 Resources or his or her designee;

16 (3) The Superintendent of the West Virginia State Police or
17 his or her designee;

18 (4) The State Superintendent of Schools or his or her
19 designee;

20 (5) The Director of the Criminal Justice and Highway Safety
21 Division or his or her designee; and

22 (6) The Commissioner of the Bureau for Children and
23 Families or his or her designee.

24 (b) The Governor shall appoint the six council members for
25 staggered terms. The terms of the members first taking office on
26 or after the effective date of this legislation shall expire as
27 designated by the Governor. Each subsequent appointment shall
28 be for a full three-year term. Any appointed member whose term
29 is expired shall serve until a successor has been duly appointed
30 and qualified. Any person appointed to fill a vacancy may serve
31 only for the unexpired term. A member is eligible for only one
32 successive reappointment. A vacancy shall be filled by the
33 Governor in the same manner as the original appointment was
34 made.

35 (c) Members of the council are not entitled to compensation
36 for services performed as members but are entitled to
37 reimbursement for all reasonable and necessary expenses
38 actually incurred in the performance of their duties in a manner
39 consistent with the guidelines of the Travel Management Office
40 of the Department of Administration.

41 (d) A majority of serving members constitutes a quorum for
42 the purpose of conducting business. The chair of the council
43 shall be designated by the Governor from among the appointed
44 council members who represent nonprofit organizations involved
45 with preventing the abduction, runaway or exploitation of
46 children or locating missing children. The term of the chair shall
47 run concurrently with his or her term of office as a member of
48 the council. The council shall conduct all meetings in accordance
49 with the open governmental meetings law pursuant to article
50 nine-a, chapter six of this code.

51 (e) The employee of the West Virginia State Police who is
52 primarily responsible for the clearinghouse established by
53 section one hundred and one of this article shall serve as the
54 executive director of the council. He or she shall receive no
55 additional compensation for service as the executive director of
56 the council but shall be reimbursed for any reasonable and
57 necessary expenses actually incurred in the performance of his
58 or her duties as executive director in a manner consistent with
59 the guidelines of the travel management office of the Department
60 of Administration.

61 (f) The expenses of council members and the executive
62 director shall be reimbursed from funds provided by foundation
63 grants, in-kind contributions or funds obtained pursuant to
64 subsection (b), section one hundred fifteen of this article.

65 (g) The executive director shall provide or obtain
66 information necessary to support the administrative work of the
67 council and, to that end, may contract with one or more nonprofit
68 organizations or state agencies for research and administrative
69 support.

70 (h) The executive director of the council shall be available
71 to the Governor and to the Speaker of the House of Delegates
72 and the President of the Senate to analyze and comment upon
73 proposed legislation and rules which relate to or materially affect
74 missing or exploited children.

75 (i) The council shall prepare and publish an annual report of
76 its activities and accomplishments and submit it to the Governor
77 and to the Joint Committee on Government and Finance on or
78 before December 15 of each year.

§49-6-114. Powers and duties of clearinghouse advisory council; comprehensive strategic plan required to be provided to the Legislature.

1 The council shall prepare a comprehensive strategic plan and
2 recommendation of programs in furtherance thereof that will
3 support efforts to prevent the abduction, runaway and
4 exploitation, or any thereof, of children to locate missing
5 children; advise the West Virginia State Police regarding
6 operation of the clearinghouse and its other responsibilities
7 under this article; and cooperate with and coordinate the efforts
8 of state agencies and private organizations involved with issues
9 relating to missing or exploited children. The council may seek
10 public and private grants, contracts, matching funds and
11 procurement arrangements from the state and federal
12 government, private industry and other agencies in furtherance
13 of its mission and programs. An initial comprehensive strategic
14 plan that will support and foster efforts to prevent the abduction,
15 runaway and exploitation of children and to locate missing
16 children shall be developed and provided to the Governor, the
17 Speaker of the House of Delegates and the President of the

18 Senate no later than July 1, 2015, and shall include, but not be
19 limited to, the following:

20 (1) Findings and determinations regarding the extent of the
21 problem in this state related to: (A) Abducted children; (B)
22 runaway children; and (C) exploited children;

23 (2) Findings and determinations identifying the systems,
24 both public and private, existing in the state to prevent the
25 abduction, runaway or exploitation of children and to locate
26 missing children and assessing the strengths and weaknesses of
27 those systems and the clearinghouse;

28 (3) The inclusion of exploited children within the functions
29 of the clearinghouse. For purposes of this article, an exploited
30 child is a person under the age of eighteen years who has been:
31 (A) Used in the production of pornography; (B) subjected to
32 sexual exploitation or sexual offenses under article eight-b,
33 chapter sixty-one of this code; or (C) employed or exhibited in
34 any injurious, immoral or dangerous business or occupation in
35 violation of sections five through eight, article eight, chapter
36 sixty-one of this code;

37 (4) Recommendations of legislative changes required to
38 improve the effectiveness of the clearinghouse and other efforts
39 to prevent abduction, runaway or exploitation of children and to
40 locate missing children. Those recommendations shall consider
41 the following:

42 (A) Interaction of the clearinghouse with child custody
43 proceedings;

44 (B) Involvement of hospitals, child care centers and other
45 private agencies in efforts to prevent child abduction, runaway
46 or exploitation and to locate missing children;

47 (C) Publication of a directory of and periodic reports
48 regarding missing children;

49 (D) Required reporting by public and private agencies and
50 penalties for failure to report and false reporting;

51 (E) Removal of names from the list of missing children;

52 (F) Creating of an advocate for missing and exploited
53 children;

54 (G) State funding for the clearinghouse and efforts to prevent
55 the abduction, runaway and exploitation of children and to locate
56 missing children;

57 (H) Mandated involvement of state agencies, such as
58 publication of information regarding missing children in existing
59 state publications and coordination with the state registrar of
60 vital statistics under section twelve, article five, chapter sixteen
61 of this code; and

62 (I) Expanded requirement for boards of education to notify
63 the clearinghouse in addition to local law-enforcement agencies
64 under section five-c, article two, chapter eighteen of this code or
65 if a birth certificate or school record received appears to be
66 inaccurate or fraudulent and to receive clearinghouse approval
67 before releasing records;

68 (5) Methods that will coordinate and engender collaborative
69 efforts among organizations throughout the state, whether public
70 or private, involved with missing or exploited children;

71 (6) Plans for the use of technology in the clearinghouse and
72 other efforts related to missing or exploited children;

73 (7) Compliance of the clearinghouse, state law and all rules
74 promulgated pursuant thereto with applicable federal law so as
75 to enhance opportunities for receiving federal grants;

76 (8) Consultation with the State Board of Education and other
77 agencies responsible for promulgating rules under this article;

78 (9) Possible methods for identifying missing children prior
79 to enrollment in a public or nonpublic school;

80 (10) The feasibility and effectiveness of utilizing the federal
81 parent locator service in locating missing children; and

82 (11) Programs for voluntary fingerprinting.

§49-6-115. Public-private partnerships; funding.

1 (a) In furtherance of its mission, the clearinghouse council
2 is authorized to enter into contracts or joint venture agreements
3 with federal and state agencies; with nonprofit corporations
4 organized pursuant to the corporate laws of this state or other
5 jurisdictions that are qualified under Section 501(c)(3) of the
6 Internal Revenue Code; and with other organizations that
7 conduct research, make grants, improve educational programs
8 and work for the prevention of missing or exploited children and
9 to locate missing children. All contracts and joint venture
10 agreements must be approved by a majority vote of the council.
11 The council may also enter into contractual agreements for

12 consideration or recompense to it even though the entities are
13 funded from sources other than the state. Members of the council
14 are not prohibited from sitting on the boards of directors of any
15 contracting private nonprofit corporation, foundation or firm.
16 However, members of the council are not exempt from chapter
17 six-b of this code.

18 (b) The council shall solicit and is authorized to receive and
19 accept gifts or grants from private foundations, corporations,
20 individuals, devises and bequests or from other lawful sources.
21 The funds shall be paid into a special account in the State
22 Treasury for the use and benefit of the council.

ARTICLE 7. INTERSTATE COOPERATION.

PART I. INTERSTATE COMPACT

ON THE PLACEMENT OF CHILDREN.

§49-7-101. Adoption of compact.

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

5 INTERSTATE COMPACT ON THE PLACEMENT OF
6 CHILDREN

ARTICLE I. PURPOSE AND POLICY.

1 It is the purpose and policy of the party states to cooperate
2 with each other in the interstate placement of children to the end
3 that:

4 (a) Each child requiring placement shall receive the
5 maximum opportunity to be placed in a suitable environment and
6 with persons or institutions having appropriate qualifications and
7 facilities to provide a necessary and desirable degree and type of
8 care.

9 (b) The appropriate authorities in a state where a child is to
10 be placed may have full opportunity to ascertain the
11 circumstances of the proposed placement, thereby promoting full
12 compliance with applicable requirements for the protection of
13 the child.

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

18 (d) Appropriate jurisdictional arrangements for the care of
19 children will be promoted.

ARTICLE II. DEFINITIONS.

1 As used in this compact:

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

4 (b) "Sending agency" means a party state, officer or
5 employee thereof; a subdivision of a party state, or officer or
6 employee thereof; a court of a party state; a person, corporation,
7 association, charitable agency or other entity which sends,
8 brings, or causes to be sent or brought any child to another party
9 state.

10 (c) "Receiving state" means the state to which a child is sent,
11 brought, or caused to be sent or brought, whether by public
12 authorities or private persons or agencies, and whether for
13 placement with state or local public authorities or for placement
14 with private agencies or persons.

15 (d) "Placement" means the arrangement for the care of a
16 child in a family free home or boarding home or in a child-caring
17 agency or institution but does not include any institution caring

18 for the mentally ill, mentally defective or epileptic or any
19 institution primarily educational in character, and any hospital or
20 other medical facility.

ARTICLE III. CONDITIONS FOR REPLACEMENT.

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

7 (b) Prior to sending, bringing or causing any child to be sent
8 or brought into a receiving state for placement in foster care or
9 as a preliminary to a possible adoption, the sending agency shall
10 furnish the appropriate public authorities in the receiving state
11 written notice of the intention to send, bring, or place the child
12 in the receiving state. The notice shall contain:

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

14 (2) The identity and address or addresses of the parents or
15 legal guardian.

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

19 (4) A full statement of the reasons for the proposed action
20 and evidence of the authority pursuant to which the placement is
21 proposed to be made.

22 (c) Any public officer or agency in a receiving state which
23 is in receipt of a notice pursuant to paragraph (b) of this article
24 may request of the sending agency, or any other appropriate
25 officer or agency of or in the sending agency's state, and shall be
26 entitled to receive therefrom, the supporting or additional
27 information as it may deem necessary under the circumstances
28 to carry out the purpose and policy of this compact.

29 (d) The child shall not be sent, brought, or caused to be sent
30 or brought into the receiving state until the appropriate public
31 authorities in the receiving state shall notify the sending agency,
32 in writing, to the effect that the proposed placement does not
33 appear to be contrary to the interests of the child.

ARTICLE IV. PENALTY FOR ILLEGAL PLACEMENT.

1 The sending, bringing, or causing to be sent or brought into
2 any receiving state of a child in violation of the terms of this

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

ARTICLE V. RETENTION OF JURISDICTION.

1 (a) The sending agency shall retain jurisdiction over the
2 child sufficient to determine all matters in relation to the
3 custody, supervision, care, treatment and disposition of the child
4 which it would have had if the child had remained in the sending
5 agency's state, until the child is adopted, reaches majority,
6 becomes self-supporting or is discharged with the concurrence
7 of the appropriate authority in the receiving state. The
8 jurisdiction shall also include the power to effect or cause the
9 return of the child or its transfer to another location and custody

10 pursuant to law. The sending agency shall continue to have
11 financial responsibility for support and maintenance of the child
12 during the period of the placement. Nothing contained herein
13 shall defeat a claim of jurisdiction by a receiving state sufficient
14 to deal with an act of delinquency or crime committed therein.

15 (b) When the sending agency is a public agency, it may enter
16 into an agreement with an authorized public or private agency in
17 the receiving state providing for the performance of one or more
18 services in respect of the case by the latter as agent for the
19 sending agency.

20 (c) Nothing in this compact shall be construed to prevent a
21 private charitable agency authorized to place children in the
22 receiving state from performing services or acting as agent in
23 that state for a private charitable agency of the sending state; nor
24 to prevent the agency in the receiving state from discharging
25 financial responsibility for the support and maintenance of a
26 child who has been placed on behalf of the sending agency
27 without relieving the responsibility set forth in paragraph (a)
28 hereof.

ARTICLE VI. INSTITUTIONAL CARE OF DELINQUENT CHILDREN.

1 A child adjudicated delinquent may be placed in an
2 institution in another party jurisdiction pursuant to this compact
3 but no placement shall be made unless the child is given a court
4 hearing on notice to the parent or guardian with opportunity to
5 be heard, prior to his or her being sent to the other party
6 jurisdiction for institutional care and the court finds that:

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

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

ARTICLE VII. COMPACT ADMINISTRATOR.

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

ARTICLE VIII. LIMITATIONS.

1 This compact shall not apply to:

2 (a) The sending or bringing of a child into a receiving state
3 by his or her parent, stepparent, grandparent, adult brother or
4 sister, adult uncle or aunt, or his or her guardian and leaving the
5 child with a relative or nonagency guardian in the receiving
6 state.

7 (b) Any placement, sending or bringing of a child into a
8 receiving state pursuant to any other interstate compact to which
9 both the state from which the child is sent or brought and the
10 receiving state are party, or to any other agreement between the
11 states which has the force of law.

ARTICLE IX. ENACTMENT AND WITHDRAWAL.

1 This compact shall be open to joinder by any state, territory
2 or possession of the United States, the District of Columbia, the
3 Commonwealth of Puerto Rico, and, with the consent of
4 Congress, the government of Canada or any province thereof. It
5 shall become effective with respect to those jurisdictions when
6 that other jurisdiction has enacted the same into law. Withdrawal
7 from this compact shall be by the enactment of a statute
8 repealing the same, but shall not take effect until two years after
9 the effective date of the statute and until written notice of the

10 withdrawal has been given by the withdrawing state to the
11 Governor of each other party jurisdiction. Withdrawal of a party
12 state shall not affect the rights, duties and obligations under this
13 compact of any sending agency therein with respect to a
14 placement made prior to the effective date of withdrawal.

ARTICLE X. CONSTRUCTION.

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

§49-7-102. Definitions; implementation.

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

7 (b) The “appropriate public authorities” as used in Article III
8 of the Interstate Compact on the Placement of Children shall,
9 with reference to this state, mean the Department of Health and
10 Human Resources and the agency shall receive and act with
11 reference to notices required by Article III.

12 (c) As used in paragraph (a) of Article V of the Interstate
13 Compact on the Placement of Children, the phrase “appropriate
14 authority in the receiving state” with reference to this state shall
15 mean the Department of Health and Human Resources.

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

19 agencies of or in other party states pursuant to paragraph (b) of
20 Article V of the Interstate Compact on the Placement of
21 Children. An agreement which contains a financial commitment
22 or imposes a financial obligation on this state or subdivision or
23 agency thereof is not binding unless it has the approval in
24 writing of the Auditor in the case of the state and of the chief
25 local fiscal officer in the case of a subdivision of the state.

26 (e) Any requirements for visitation, inspection or supervision
27 of children, homes, institutions or other agencies in another party
28 state which may apply under sections one hundred eight and one
29 hundred eleven, article two of this chapter shall be deemed to be
30 met if performed pursuant to an agreement entered into by
31 appropriate officers or agencies of this state or a subdivision
32 thereof as contemplated by paragraph (b) of Article V of the
33 Interstate Compact on the Placement of Children.

34 (f) Section one hundred nine, article two of this chapter does
35 not apply to placements made pursuant to the Interstate Compact
36 on the Placement of Children.

37 (g) Any court having jurisdiction to place delinquent
38 children may place a child in an institution of or in another state
39 pursuant to Article VI of the Interstate Compact on the
40 Placement of Children and shall retain jurisdiction as provided
41 in Article V thereof.

42 (h) As used in Article VII of the interstate compact on the
43 placement of children, the term “executive head” means the
44 Governor. The Governor is hereby authorized to appoint a
45 compact administrator in accordance with the terms of that
46 Article VII.

PART II. INTERSTATE ADOPTION ASSISTANCE COMPACT.

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

1 (a) The Legislature finds that:

2 (1) Finding adoptive families for children, for whom state
3 assistance is desirable pursuant to section one hundred twelve,
4 article four, of this chapter and assuring the protection of the
5 interests of the children affected during the entire assistance
6 period, require special measures when the adoptive parents move
7 to other states or are residents of another state; and

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

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

13 (1) Authorize the Department of Health and Human
14 Resources to enter into interstate agreements with agencies of
15 other states for the protection of children on behalf of whom
16 adoption assistance is being provided by the Department of
17 Health and Human Resources; and

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

§49-7-202. Interstate adoption assistance compacts authorized; definitions.

1 (a) The Department of Health and Human Resources is
2 authorized to develop, participate in the development of,
3 negotiate and enter into one or more interstate compacts on
4 behalf of this state with other states to implement one or more of
5 the purposes set forth in sections two hundred one through two
6 hundred four of this article. When so entered into, and for so

7 long as it shall remain in force, the compact shall have the force
8 and effect of law.

9 (b) For the purposes of sections two hundred one through
10 two hundred four of this article, the term “state” means a state of
11 the United States, the District of Columbia, the Commonwealth
12 of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of
13 the Northern Mariana Islands, or a Territory or Possession of or
14 administered by the United States.

15 (c) For the purposes of sections two hundred one through
16 two hundred four of this article, the term “adoption assistance
17 state” means the state that is signatory to an adoption assistance
18 agreement in a particular case.

19 (d) For the purposes of sections two hundred one through
20 two hundred four of this article, the term “residence state” means
21 the state of which the child is a resident by virtue of the
22 residence of the adoptive parents.

§49-7-203. Interstate adoption assistance compact; contents of compact.

1 A compact entered into pursuant to the authority conferred
2 by sections two hundred one through two hundred four of this
3 article shall have the following content:

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

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

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

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

24 (5) Other provisions as may be appropriate to implement the
25 proper administration of the compact.

§49-7-204. Medical assistance for children with special needs; rule-
making; penalties.

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

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

17 (c) The Department of Health and Human Resources shall
18 provide coverage and benefits for a child who is in another state
19 and who is covered by an adoption assistance agreement made
20 by the Department of Health and Human Resources for the
21 coverage or benefits, if any, not provided by the residence state.
22 To this end, the adoptive parents acting for the child may submit
23 evidence of payment for services or benefit amounts not payable
24 in the residence state and shall be reimbursed therefor. However,
25 there may be no reimbursement for services or benefit amounts
26 covered under any insurance or other third party medical
27 contract or arrangement held by the child or the adoptive parents.
28 The Department of Health and Human Resources shall propose
29 rules in accordance with article three, chapter twenty-nine-a of
30 this code that are necessary to effectuate the requirements and
31 purposes of this section. The additional coverages and benefit
32 amounts provided pursuant to this section shall be for services to
33 the cost of which there is no federal contribution, or which, if
34 federally aided, are not provided by the residence state. Among
35 other things, the regulations shall include procedures to be

36 followed in obtaining prior approvals for services in those
37 instances where required for the assistance.

38 (d) Any person who submits a claim for payment or
39 reimbursement for services or benefits pursuant to this section or
40 the making of any statement in connection therewith, which
41 claim of statement the maker knows or should know to be false,
42 misleading or fraudulent is guilty of a felony and, upon
43 conviction, shall be fined not more than \$10,000, or incarcerated
44 in a correctional facility not more than two years, or both fined
45 and incarcerated.

46 (e) This section applies only to medical assistance for
47 children under adoption assistance agreements from states that
48 have entered into a compact with this state under which the other
49 state provides medical assistance to children with special needs
50 under adoption assistance agreements made by this state. All
51 other children entitled to medical assistance pursuant to adoption
52 assistance agreements entered into by this state shall be eligible
53 to receive it in accordance with the laws and procedures
54 applicable thereto.

PART III. INTERSTATE COMPACT FOR JUVENILES.

§49-7-301. Execution of interstate compact for juveniles.

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

INTERSTATE COMPACT FOR JUVENILES

ARTICLE I. PURPOSE.

1 (a) The compacting states to this interstate compact
2 recognize that each state is responsible for the proper supervision
3 or return of juveniles, delinquents and status offenders who are
4 on probation or parole and who have absconded, escaped or run
5 away from supervision and control and in so doing have
6 endangered their own safety and the safety of others. The
7 compacting states also recognize that each state is responsible
8 for the safe return of juveniles who have run away from home
9 and in doing so have left their state of residence. The compacting
10 states also recognize that Congress, by enacting the Crime
11 Control Act, 4 U.S.C. Section 112 (1965), has authorized and

12 encouraged compacts for cooperative efforts and mutual
13 assistance in the prevention of crime.

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

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

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

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

26 (4) To make contracts for the cooperative institutionalization
27 in public facilities in member states for delinquent youth needing
28 special services;

29 (5) To provide for the effective tracking and supervision of
30 juveniles;

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

33 (7) To establish procedures to manage the movement
34 between states of juvenile offenders released to the community
35 under the jurisdiction of courts, juvenile departments, or any
36 other criminal or juvenile justice agency which has jurisdiction
37 over juvenile offenders;

38 (8) To ensure immediate notice to jurisdictions where
39 defined offenders are authorized to travel or to relocate across
40 state lines;

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

44 (10) To establish a system of uniform data collection on
45 information pertaining to juveniles subject to this compact that
46 allows access by authorized juvenile justice and criminal justice
47 officials, and regular reporting of compact activities to heads of
48 state executive, judicial, and legislative branches and juvenile
49 and criminal justice administrators;

50 (11) To monitor compliance with rules governing interstate
51 movement of juveniles and initiate interventions to address and
52 correct noncompliance;

53 (12) To coordinate training and education regarding the
54 regulation of interstate movement of juveniles for officials
55 involved in the activity; and

56 (13) To coordinate the implementation and operation of the
57 compact with the interstate compact for the placement of
58 children, the interstate compact for adult offender supervision
59 and other compacts affecting juveniles, particularly in those
60 cases where concurrent or overlapping supervision issues arise.

61 (c) It is the policy of the compacting states that the activities
62 conducted by the interstate commission created herein are the
63 formation of public policies and therefore are public business.
64 Furthermore, the compacting states shall cooperate and observe
65 their individual and collective duties and responsibilities for the
66 prompt return and acceptance of juveniles subject to the
67 provisions of this compact. The provisions of this compact shall

68 be reasonably and liberally construed to accomplish the purposes
69 and policies of the compact.

ARTICLE II. DEFINITIONS.

1 As used in this compact, unless the context clearly requires
2 a different construction:

3 (a) “Bylaws” means those bylaws established by the
4 interstate commission for its governance, or for directing or
5 controlling its actions or conduct.

6 (b) “Compact administrator” means the individual in each
7 compacting state appointed pursuant to the terms of this
8 compact, responsible for the administration and management of
9 the state’s supervision and transfer of juveniles subject to the
10 terms of this compact, the rules adopted by the interstate
11 commission and policies adopted by the state council under this
12 compact.

13 (c) “Compacting state” means any state which has enacted
14 the enabling legislation for this compact.

15 (d) “Commissioner” means the voting representative of each
16 compacting state appointed pursuant to Article III of this
17 compact.

18 (e) “Court” means any court having jurisdiction over
19 delinquent, neglected, or dependent children.

20 (f) “Deputy compact administrator” means the individual, if
21 any, in each compacting state appointed to act on behalf of a
22 compact administrator pursuant to the terms of this compact
23 responsible for the administration and management of the state’s
24 supervision and transfer of juveniles subject to the terms of this
25 compact, the rules adopted by the interstate commission and
26 policies adopted by the state council under this compact.

27 (g) “Interstate commission” means the interstate commission
28 for juveniles created by Article III of this compact.

29 (h) “Juvenile” means any person defined as a juvenile in any
30 member state or by the rules of the interstate commission,
31 including:

32 (1) Accused delinquent – a person charged with an offense
33 that, if committed by an adult, would be a criminal offense;

34 (2) Adjudicated delinquent – a person found to have
35 committed an offense that, if committed by an adult, would be
36 a criminal offense;

37 (3) Accused status offender – a person charged with an
38 offense that would not be a criminal offense if committed by an
39 adult;

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

43 (i) Nonoffender – a person in need of supervision who has
44 not been accused or adjudicated a status offender or delinquent.

45 (j) “Noncompacting state” means any state which has not
46 enacted the enabling legislation for this compact.

47 (k) “Probation or parole” means any kind of supervision or
48 conditional release of juveniles authorized under the laws of the
49 compacting states.

50 (l) “Rule” means a written statement by the interstate
51 commission promulgated pursuant to Article VI of this compact
52 that is of general applicability, implements, interprets or
53 prescribes a policy or provision of the compact, or an
54 organizational, procedural, or practice requirement of the
55 commission, and has the force and effect of statutory law in a

56 compacting state, and includes the amendment, repeal, or
57 suspension of an existing rule.

58 (m) “State” means a state of the United States, the District
59 of Columbia (or its designee), the Commonwealth of Puerto
60 Rico, the U.S. Virgin Islands, Guam, American Samoa, and the
61 Northern Marianas Islands.

ARTICLE III. INTERSTATE COMMISSION FOR JUVENILES.

1 (a) The compacting states hereby create the “Interstate
2 Commission for Juveniles.” The commission shall be a body
3 corporate and joint agency of the compacting states. The
4 commission shall have all the responsibilities, powers and duties
5 set forth herein, and the additional powers as may be conferred
6 upon it by subsequent action of the respective Legislatures of the
7 compacting states in accordance with the terms of this compact.

8 (b) The interstate commission shall consist of commissioners
9 appointed by the appropriate appointing authority in each state
10 pursuant to the rules and requirements of each compacting state
11 and in consultation with the state council for interstate juvenile
12 supervision created hereunder. The commissioner shall be the
13 compact administrator, deputy compact administrator or

14 designee from that state who shall serve on the interstate
15 commission in the capacity under or pursuant to the applicable
16 law of the compacting state.

17 (c) In addition to the commissioners who are the voting
18 representatives of each state, the interstate commission shall
19 include individuals who are not commissioners, but who are
20 members of interested organizations. The noncommissioner
21 members must include a member of the national organizations
22 of Governors, legislators, state chief justices, attorneys general,
23 interstate compact for adult offender supervision, interstate
24 compact for the placement of children, juvenile justice and
25 juvenile corrections officials, and crime victims. All
26 noncommissioner members of the interstate commission shall be
27 ex officio (nonvoting) members. The interstate commission may
28 provide in its bylaws for the additional ex officio (nonvoting)
29 members, including members of other national organizations, in
30 such numbers as shall be determined by the commission.

31 (d) Each compacting state represented at any meeting of the
32 commission is entitled to one vote. A majority of the compacting

33 states shall constitute a quorum for the transaction of business,
34 unless a larger quorum is required by the bylaws of the interstate
35 commission.

36 (e) The commission shall meet at least once each calendar
37 year. The chairperson may call additional meetings and, upon the
38 request of a simple majority of the compacting states, shall call
39 additional meetings. Public notice shall be given of all meetings
40 and meetings shall be open to the public.

41 (f) The interstate commission shall establish an executive
42 committee, which shall include commission officers, members,
43 and others as determined by the bylaws. The executive
44 committee shall have the power to act on behalf of the interstate
45 commission during periods when the interstate commission is
46 not in session, with the exception of rule making and/or
47 amendment to the compact. The executive committee shall
48 oversee the day-to-day activities of the administration of the
49 compact managed by an executive director and interstate
50 commission staff; administers enforcement and compliance with
51 the provisions of the compact, its bylaws and rules, and performs

52 other duties as directed by the interstate commission or set forth
53 in the bylaws.

54 (g) Each member of the interstate commission shall have the
55 right and power to cast a vote to which that compacting state is
56 entitled and to participate in the business and affairs of the
57 interstate commission. A member shall vote in person and shall
58 not delegate a vote to another compacting state. However, a
59 commissioner, in consultation with the state council, shall
60 appoint another authorized representative, in the absence of the
61 commissioner from that state, to cast a vote on behalf of the
62 compacting state at a specified meeting. The bylaws may
63 provide for members' participation in meetings by telephone or
64 other means of telecommunication or electronic communication.

65 (h) The interstate commission's bylaws shall establish
66 conditions and procedures under which the interstate
67 commission shall make its information and official records
68 available to the public for inspection or copying. The interstate
69 commission may exempt from disclosure any information or
70 official records to the extent they would adversely affect
71 personal privacy rights or proprietary interests.

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

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

80 (2) Disclose matters specifically exempted from disclosure
81 by statute;

82 (3) Disclose trade secrets or commercial or financial
83 information which is privileged or confidential;

84 (4) Involve accusing any person of a crime, or formally
85 censuring any person;

86 (5) Disclose information of a personal nature where
87 disclosure would constitute a clearly unwarranted invasion of
88 personal privacy;

89 (6) Disclose investigative records compiled for
90 law-enforcement purposes;

91 (7) Disclose information contained in or related to
92 examination, operating or condition reports prepared by, or on
93 behalf of or for the use of, the interstate commission with respect
94 to a regulated person or entity for the purpose of regulation or
95 supervision of the person or entity;

96 (8) Disclose information, the premature disclosure of which
97 would significantly endanger the stability of a regulated person
98 or entity; or

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

102 (j) For every meeting closed pursuant to subsection (i) of this
103 section, the interstate commission's legal counsel shall publicly
104 certify that, in the legal counsel's opinion, the meeting may be
105 closed to the public, and shall reference each relevant exemptive
106 provision. The interstate commission shall keep minutes which
107 shall fully and clearly describe all matters discussed in any
108 meeting and shall provide a full and accurate summary of any
109 actions taken, and the reasons therefore, including a description

110 of each of the views expressed on any item and the record of any
111 roll call vote (reflected in the vote of each member on the
112 question). All documents considered in connection with any
113 action shall be identified in the minutes.

114 (k) The interstate commission shall collect standardized data
115 concerning the interstate movement of juveniles as directed
116 through its rules which shall specify the data to be collected, the
117 means of collection and data exchange and reporting
118 requirements. The methods of data collection, exchange and
119 reporting shall insofar as is reasonably possible conform to
120 up-to-date technology and coordinate its information functions
121 with the appropriate repository of records.

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

1 The interstate commission shall have the following powers
2 and duties:

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

5 (b) To promulgate rules to effect the purposes and
6 obligations as enumerated in this compact, which shall have the

7 force and effect of statutory law and shall be binding in the
8 compacting states to the extent and in the manner provided in
9 this compact.

10 (c) To oversee, supervise and coordinate the interstate
11 movement of juveniles subject to the terms of this compact and
12 any bylaws adopted and rules promulgated by the interstate
13 commission.

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

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

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

21 (g) To borrow, accept, hire or contract for services of
22 personnel.

23 (h) To establish and appoint committees and hire staff which
24 it deems necessary for the carrying out of its functions including,
25 but not limited to, an executive committee as required by Article

26 III which shall have the power to act on behalf of the interstate
27 commission in carrying out its powers and duties hereunder.

28 (i) To elect or appoint officers, attorneys, employees, agents,
29 or consultants, and to fix their compensation, define their duties
30 and determine their qualifications.

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

34 (k) To accept any and all donations and grants of money,
35 equipment, supplies, materials, and services, and to receive,
36 utilize, and dispose of it.

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

40 (m) To sell, convey, mortgage, pledge, lease, exchange,
41 abandon, or otherwise dispose of any property, real, personal or
42 mixed.

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

45 (o) To sue and be sued.

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

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

50 (r) To report annually to the Legislatures, Governors,
51 judiciary, and state councils of the compacting states concerning
52 the activities of the interstate commission during the preceding
53 year. Reports shall also include any recommendations that may
54 have been adopted by the interstate commission.

55 (s) To coordinate education, training and public awareness
56 regarding the interstate movement of juveniles for officials
57 involved in the activity.

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

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

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

Section A. Bylaws.

1 (a) The interstate commission shall, by a majority of the
2 members present and voting, within twelve months after the first

3 interstate commission meeting, adopt bylaws to govern its
4 conduct as may be necessary or appropriate to carry out the
5 purposes of the compact, including, but not limited to:

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

7 (2) Establish an executive committee and the other
8 committees as may be necessary to;

9 (3) Provide for the establishment of committees governing
10 any general or specific delegation of any authority or function of
11 the interstate commission;

12 (4) Provide reasonable procedures for calling and conducting
13 meetings of the interstate commission, and ensure reasonable
14 notice of each meeting;

15 (5) Establish the titles and responsibilities of the officers of
16 the interstate commission;

17 (6) Provide a mechanism for concluding the operations of
18 the interstate commission and the return of any surplus funds
19 that may exist upon the termination of the compact after the
20 payment and/or reserving of all of its debts and obligations.

21 (7) Providing “start-up” rules for initial administration of the
22 compact; and

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

Section B. Officers and Staff.

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

13 (2) The interstate commission shall, through its executive
14 committee, appoint or retain an executive director for such
15 period, upon terms and conditions and compensation as the
16 interstate commission may deem appropriate. The executive

17 director shall serve as secretary to the interstate commission, but
18 shall not be a member and shall hire and supervise other staff as
19 may be authorized by the interstate commission.

Section C. Qualified Immunity, Defense and Indemnification.

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

12 (2) The liability of any commissioner, or the employee or
13 agent of a commissioner, acting within the scope of a person's
14 employment or duties for acts, errors, or omissions occurring
15 within such person's state may not exceed the limits of liability

16 set forth under the Constitution and laws of that state for state
17 officials, employees, and agents. Nothing in this subsection shall
18 be construed to protect a person from suit or liability for any
19 damage, loss, injury, or liability caused by the intentional or
20 willful and wanton misconduct of a person.

21 (3) The interstate commission shall defend the executive
22 director or the employees or representatives of the interstate
23 commission and, subject to the approval of the Attorney General
24 of the state represented by any commissioner of a compacting
25 state, shall defend the commissioner or the commissioner's
26 representatives or employees in any civil action seeking to
27 impose liability arising out of any actual or alleged act, error or
28 omission that occurred within the scope of interstate commission
29 employment, duties or responsibilities, or that the defendant had
30 a reasonable basis for believing occurred within the scope of
31 interstate commission employment, duties, or responsibilities,
32 provided that the actual or alleged act, error, or omission did not
33 result from intentional or willful and wanton misconduct on the
34 part of such person.

35 (4) The interstate commission shall indemnify and hold the
36 commissioner of a compacting state, or the commissioner's
37 representatives or employees, or the interstate commission's
38 representatives or employees, harmless in the amount of any
39 settlement or judgment obtained against such persons arising out
40 of any actual or alleged act, error, or omission that occurred
41 within the scope of interstate commission employment, duties,
42 or responsibilities, or that such persons had a reasonable basis
43 for believing occurred within the scope of interstate commission
44 employment, duties, or responsibilities, provided that the actual
45 or alleged act, error, or omission did not result from intentional
46 or willful and wanton misconduct on the part of such persons.

**ARTICLE VI. RULE-MAKING FUNCTIONS OF THE INTERSTATE
COMMISSION.**

1 (a) The interstate commission shall promulgate and publish
2 rules in order to effectively and efficiently achieve the purposes
3 of the compact.

4 (b) Rule making shall occur pursuant to the criteria set forth
5 in this article and the bylaws and rules adopted pursuant thereto.
6 Such rule making shall substantially conform to the principles of

7 the “Model State Administrative Procedures Act,” 1981 Act,
8 Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other
9 administrative procedures act, as the interstate commission
10 deems appropriate consistent with due process requirements
11 under the U.S. Constitution as now or hereafter interpreted by
12 the U.S. Supreme Court. All rules and amendments shall become
13 binding as of the date specified, as published with the final
14 version of the rule as approved by the commission.

15 (c) When promulgating a rule, the interstate commission
16 shall, at a minimum:

17 (1) Publish the proposed rule’s entire text stating the
18 reason(s) for that proposed rule;

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

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

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

27 (d) Allow, not later than sixty days after a rule is
28 promulgated, any interested person to file a petition in the United
29 States District Court for the District of Columbia or in the
30 federal district court where the interstate commission's principal
31 office is located for judicial review of such rule. If the court
32 finds that the interstate commission's action is not supported by
33 substantial evidence in the rule-making record, the court shall
34 hold the rule unlawful and set it aside. For purposes of this
35 subsection, evidence is substantial if it would be considered
36 substantial evidence under the Model State Administrative
37 Procedures Act.

38 (e) If a majority of the Legislatures of the compacting states
39 rejects a rule, those states may, by enactment of a statute or
40 resolution in the same manner used to adopt the compact, cause
41 that such rule shall have no further force and effect in any
42 compacting state.

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

47 (g) Upon determination by the interstate commission that a
48 state-of-emergency exists, it may promulgate an emergency rule
49 which shall become effective immediately upon adoption,
50 provided that the usual rule-making procedures provided
51 hereunder shall be retroactively applied to the rule as soon as
52 reasonably possible, but no later than ninety days after the
53 effective date of the emergency rule.

ARTICLE VII. OVERSIGHT, ENFORCEMENT AND DISPUTE SOLUTION
BY THE INTERSTATE COMMISSION.

Section A. Oversight.

1 (a)(1) The interstate commission shall oversee the
2 administration and operations of the interstate movement of
3 juveniles subject to this compact in the compacting states and
4 shall monitor such activities being administered in
5 noncompacting states which may significantly affect compacting
6 states.

7 (2) The courts and executive agencies in each compacting
8 state shall enforce this compact and shall take all actions
9 necessary and appropriate to effectuate the compact's purposes
10 and intent.

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

16 (4) In any judicial or administrative proceeding in a
17 compacting state pertaining to the subject matter of this compact
18 which may affect the powers, responsibilities or actions of the
19 interstate commission, it shall be entitled to receive all service
20 of process in any such proceeding, and shall have standing to
21 intervene in the proceeding for all purposes.

Section B. Dispute Resolution.

1 (b)(1) The compacting states shall report to the interstate
2 commission on all issues and activities necessary for the
3 administration of the compact as well as issues and activities
4 pertaining to compliance with the provisions of the compact and
5 its bylaws and rules.

6 (2) The interstate commission shall attempt, upon the request
7 of a compacting state, to resolve any disputes or other issues

8 which are subject to the compact and which may arise among
9 compacting states and between compacting and noncompacting
10 states. The commission shall promulgate a rule providing for
11 both mediation and binding dispute resolution for disputes
12 among the compacting states.

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

ARTICLE VIII. FINANCE.

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

4 (b) The interstate commission shall levy on and collect an
5 annual assessment from each compacting state to cover the cost
6 of the internal operations and activities of the interstate
7 commission and its staff which must be in a total amount
8 sufficient to cover the interstate commission's annual budget as
9 approved each year. The aggregate annual assessment amount
10 shall be allocated based upon a formula to be determined by the

11 interstate commission, taking into consideration the population
12 of each compacting state and the volume of interstate movement
13 of juveniles in each compacting state and shall promulgate a rule
14 binding upon all compacting states which governs the
15 assessment.

16 (c) The interstate commission shall not incur any obligations
17 of any kind prior to securing the funds adequate to meet the
18 same; nor shall the interstate commission pledge the credit of
19 any of the compacting states, except by and with the authority of
20 the compacting state.

21 (d) The interstate commission shall keep accurate accounts
22 of all receipts and disbursements. The receipts and
23 disbursements of the interstate commission shall be subject to
24 the audit and accounting procedures established under its
25 bylaws. However, all receipts and disbursements of funds
26 handled by the interstate commission shall be audited yearly by
27 a certified or licensed public accountant and the report of the
28 audit shall be included in and become part of the annual report
29 of the interstate commission.

ARTICLE IX. THE STATE COUNCIL.

1 Each member state shall create a state council for interstate
2 juvenile supervision. While each state may determine the
3 membership of its own state council, its membership must
4 include at least one representative from the legislative, judicial,
5 and executive branches of government, victims groups, and the
6 compact administrator, deputy compact administrator or
7 designee. Each compacting state retains the right to determine
8 the qualifications of the compact administrator or deputy
9 compact administrator. Each state council will advise and may
10 exercise oversight and advocacy concerning that state's
11 participation in interstate commission activities and other duties
12 as may be determined by that state, including, but not limited to,
13 development of policy concerning operations and procedures of
14 the compact within that state.

ARTICLE X. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT.

1 (a) Any state, the District of Columbia (or its designee), the
2 Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam,
3 American Samoa, and the Northern Marianas Islands as defined

4 in Article II of this compact is eligible to become a compacting
5 state.

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

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

ARTICLE XI. WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT.

Section A. Withdrawal.

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

6 (2) The effective date of withdrawal is the effective date of
7 the repeal.

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

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

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

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

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

6 (A) Remedial training and technical assistance as directed by
7 the interstate commission;

8 (B) Alternative dispute resolution;

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

11 (D) Suspension or termination of membership in the
12 compact shall be imposed only after all other reasonable means
13 of securing compliance under the bylaws and rules have been
14 exhausted and the interstate commission has therefore

15 determined that the offending state is in default. Immediate
16 notice of suspension shall be given by the interstate commission
17 to the Governor, the chief justice or the chief judicial officer of
18 the state, the majority and minority leaders of the defaulting
19 state's Legislature, and the state council.

20 (2) The grounds for default include, but are not limited to,
21 failure of a compacting state to perform such obligations or
22 responsibilities imposed upon it by this compact, the bylaws, or
23 duly promulgated rules and any other grounds designated in
24 commission bylaws and rules.

25 (3) The interstate commission shall immediately notify the
26 defaulting state in writing of the penalty imposed by the
27 interstate commission and of the default pending a cure of the
28 default.

29 (4) The commission shall stipulate the conditions and the
30 time period within which the defaulting state must cure its
31 default. If the defaulting state fails to cure the default within the
32 time period specified by the commission, the defaulting state
33 shall be terminated from the compact upon an affirmative vote

34 of a majority of the compacting states and all rights, privileges
35 and benefits conferred by this compact shall be terminated from
36 the effective date of termination.

37 (5) Within sixty days of the effective date of termination of
38 a defaulting state, the commission shall notify the Governor, the
39 chief justice or chief judicial officer, the majority and minority
40 leaders of the defaulting state's Legislature, and the state council
41 of such termination.

42 (6) The defaulting state is responsible for all assessments,
43 obligations and liabilities incurred through the effective date of
44 termination including any obligations, the performance of which
45 extends beyond the effective date of termination.

46 (7) The interstate commission shall not bear any costs
47 relating to the defaulting state unless otherwise mutually agreed
48 upon in writing between the interstate commission and the
49 defaulting state.

50 (8) Reinstatement following termination of any compacting
51 state requires both a reenactment of the compact by the
52 defaulting state and the approval of the interstate commission
53 pursuant to the rules.

Section C. Judicial Enforcement.

1 (c) The interstate commission may, by majority vote of the
2 members, initiate legal action in the United States District Court
3 for the District of Columbia or, at the discretion of the interstate
4 commission, in the federal district where the interstate
5 commission has its offices, to enforce compliance with the
6 provisions of the compact, its duly promulgated rules and
7 bylaws, against any compacting state in default. In the event
8 judicial enforcement is necessary the prevailing party shall be
9 awarded all costs of such litigation including reasonable
10 attorneys fees.

Section D. Dissolution of Compact.

1 (d)(1) The compact dissolves effective upon the date of the
2 withdrawal or default of the compacting state, which reduces
3 membership in the compact to one compacting state.
4 (2) Upon the dissolution of this compact, the compact
5 becomes null and void and shall be of no further force or effect,
6 and the business and affairs of the interstate commission shall be
7 concluded and any surplus funds shall be distributed in
8 accordance with the bylaws.

ARTICLE XII. SEVERABILITY AND CONSTRUCTION.

- 1 (a) The provisions of this compact shall be severable, and if
2 any phrase, clause, sentence or provision is deemed
3 unenforceable, the remaining provisions of the compact shall be
4 enforceable.
- 5 (b) The provisions of this compact shall be liberally
6 construed to effectuate its purposes.

ARTICLE XIII. BINDING EFFECT OF COMPACT AND OTHER LAWS.**Section A. Other Laws.**

- 1 (a)(1) Nothing herein prevents the enforcement of any other
2 law of a compacting state that is not inconsistent with this
3 compact.
- 4 (2) All compacting states' laws other than state Constitutions
5 and other interstate compacts conflicting with this compact are
6 superseded to the extent of the conflict.

Section B. Binding Effect of the Compact.

- 1 (b)(1) All lawful actions of the interstate commission,
2 including all rules and bylaws promulgated by the interstate
3 commission, are binding upon the compacting states.

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

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

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

§49-7-302. State council for interstate juvenile supervision;
members; authority.

1 (a) Upon the effective date of the interstate compact for
2 juveniles, there shall be created a state council for interstate

3 juvenile supervision. The state council shall be comprised of a
4 total of nine members, to be selected and designated as follows:

5 (1) Two members designated by the Legislature, one of
6 whom shall be named and appointed by the Speaker of the
7 House, and the other of whom shall be designated by the
8 President of the Senate;

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

12 (3) The compact administrator or a designee of the compact
13 administrator; and

14 (4) Four members to be designated and appointed by the
15 Governor, two of whom must be representatives of state agencies
16 dealing with juvenile corrections, juvenile placement or juvenile
17 services, and one of whom must be a representative of a victims'
18 group.

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

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

§49-7-303. Appointment of compact administrator.

1 (a) Upon and after the effective date of the interstate
2 compact for juveniles, the Governor is hereby authorized and
3 empowered to designate an officer who shall be the compact
4 administrator and who, acting jointly with like offices of the
5 other party states, shall be responsible for the administration and
6 management of this state's supervision and transfer of juveniles
7 subject to the terms of this compact, the rules adopted by the
8 interstate commission and the policies adopted by the state
9 council under this compact. The compact administrator shall
10 serve subject to the will and pleasure of the Governor, and must
11 meet the minimum qualifications for the position of compact
12 administrator, as established by the state council. The compact

13 administrator is hereby authorized, empowered and directed to
14 cooperate with all departments, agencies and officers of and in
15 the government of this state and its subdivisions in facilitating
16 the proper administration of the compact or of any
17 supplementary agreement or agreements entered into by this
18 state hereunder.

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

25 (c) Until the state council has met and designated a
26 commissioner to vote on behalf of the State of West Virginia at
27 the interstate commission, the individual or administrator who
28 has been designated to act as the juvenile compact administrator
29 for the interstate compact for juveniles shall function as the
30 acting commissioner for the State of West Virginia before the
31 interstate commission formed under the new compact.

§49-7-304. Notification of the effective date of the interstate compact for juveniles.

- 1 Within ten days of the date that the thirty-fifth state adopts
- 2 legislation approving this compact, the appointed or designated
- 3 juvenile compact administrator under section three hundred
- 4 three, article seven of this chapter shall advise the Governor, the
- 5 Chief Justice of the Supreme Court of Appeals of West Virginia,
- 6 the Speaker of the House of Delegates and the President of the
- 7 Senate 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, it has been completely underscored.

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.