

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-THIRD LEGISLATURE
REGULAR SESSION, 2018
TWENTY-FOURTH DAY

Charleston, West Virginia, Friday, February 2, 2018

The Senate met at 11:08 a.m.

(Senator Carmichael, Mr. President, in the Chair.)

Prayer was offered by Deacon David Galvin, St. James The Greater Catholic Church, Charles Town, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Lynne Carden Arvon, a senator from the ninth district.

Pending the reading of the Journal of Thursday, February 1, 2018,

At the request of Senator Unger, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

The Senate then proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 4233—A Bill to amend and reenact §40-1A-1, §40-1A-2, §40-1A-4, §40-1A-5, §40-1A-6, and §40-1A-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §40-1A-13, §40-1A-14, and §40-1A-15, all relating generally to fraudulent transfers and voidable transactions; establishing that a presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence; providing that a creditor making a claim for relief has the burden of proving the elements of the claim for relief by a preponderance of the evidence; setting forth rules regarding the defenses, liability and protection of transferees; establishing the governing law; providing for the application to series organizations; providing for the limiting, modifying or superseding of the federal Electronic Signatures in Global and National Commerce Act; and adding and modifying definitions and headings.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 4242—A Bill to amend and reenact §50-4-8 of the Code of West Virginia, 1931, as amended, relating to clarifying the jurisdictional amount for removal of a civil action from magistrate court to circuit court; and providing an exception for landlord-tenant actions.

Referred to the Committee on the Judiciary.

The Senate proceeded to the fourth order of business.

Senator Gaunch, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Senate Bill 94, Prohibiting counties from regulating fireworks.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill 94 (originating in the Committee on Government Organization)—A Bill to amend and reenact §29-3E-10 of the Code of West Virginia, 1931, as amended, relating to fireworks safety; permitting governing board of municipality or county to regulate the use of consumer fireworks within its boundaries; and prohibiting governing board of municipality or county from prohibiting use of consumer fireworks within its boundaries.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

C. Edward Gaunch,
Chair.

Senator Gaunch, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Com. Sub. for Senate Bill 141 (originating in the Committee on Agriculture and Rural Development), Expanding county assessment and collection of head tax on breeding cows.

And reports back a committee substitute for same with the following title:

Com. Sub. for Com. Sub. for Senate Bill 141 (originating in the Committee on Government Organization)—A Bill to amend and reenact §7-7-6e of the Code of West Virginia, 1931, as amended, relating to expanding the county assessment and collection of a head tax on breeding cows, if the owner participates in the Coyote Control Program; and providing for notice requirements to the land owner.

With the recommendation that the committee substitute for committee substitute do pass.

Respectfully submitted,

C. Edward Gaunch,
Chair.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Senate Bills 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, and 233, DNR rule relating to controlling public land corporation's sale, lease, exchange, or transfer of land or minerals.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill 230 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §64-10-1, §64-10-2, §64-10-3, and §64-10-4 of the Code of West Virginia, 1931, as amended, relating generally to the Department of Commerce; authorizing certain agencies to promulgate rules as filed, as modified, and as amended by the Legislature; repealing a rule; authorizing the Division of Natural Resources to promulgate a legislative rule relating to controlling the public land corporation's sale, lease, exchange or transfer of land or minerals; authorizing the Division of Natural Resources to promulgate a legislative rule relating to hunting, fishing and other outfitters and guides; authorizing the Division of Natural Resources to promulgate a legislative rule relating to general hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special migratory game bird hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to miscellaneous permits and licenses; authorizing the Division of Labor to promulgate a legislative rule relating to Zipline and Canopy Tour Responsibility Act; authorizing the Division of Labor to promulgate a legislative rule relating to bedding and upholstered furniture; authorizing the Division of Labor to promulgate a legislative rule relating to Amusement Rides and Amusement Attractions Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to Elevator Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to employer wage bonds; authorizing the Division of Labor to promulgate a legislative rule relating to registration of service persons and service agencies; authorizing the Division of Labor to promulgate a legislative rule relating to registration of weighing and measuring devices used by businesses in commercial transactions; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to operating diesel equipment in underground mines in West Virginia; and repealing the Division of Energy legislative rule relating to community development assessment and real property valuation procedures for Office of Coalfield Community Development.

And,

Senate Bill 361, Relating to treatment supervision under Drug Offender Accountability and Treatment Act.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill 361 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §62-15-6a of the Code of West Virginia, 1931, as amended, relating to treatment supervision under the Drug Offender Accountability and Treatment Act; expanding offender groups eligible for treatment supervision, including addition of the Administrative Office of the Supreme Court of Appeals, along with the Division of Justice and Community Services, to consult with the Governor’s Advisory Council on Substance Abuse to use appropriated funds to develop proposed substance abuse treatment plans to serve those offenders under treatment supervision in each judicial circuit and on parole supervision; and including the Administrative Office of the Supreme Court of Appeals, along with the Division of Justice and Community Services, in developing qualifications and other matters related to the quality and delivery of services to offenders.

With the recommendation that the two committee substitutes do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Takubo, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

Senate Bill 273, Reducing use of opiates.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill 273 (originating in the Committee on Health and Human Resources)—A Bill to amend and reenact §16-5H-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-5H-9 of said code; and to amend and reenact §16-5Y-2, §16-5Y-4 and §16-5Y-5 of said code; and to amend said code by adding thereto a new article, designated §16-54-1, §16-54-2, §16-54-3, §16-54-4, §16-54-5, §16-54-6, §16-54-7, §16-54-8 and §16-54-9; to amend and reenact §30-3-14 of said code; to amend and reenact §30-3A-1, §30-3A-2, §30-3A-3, and §30-3A-4 of said code; to amend and reenact §30-4-19 of said code; to amend and reenact §30-5-6 of said code; to amend and reenact §30-7-11 of said code; to amend and reenact §30-8-18 of said code; to amend and reenact §30-14-12a of said code; to amend and reenact §30-36-2 of said code; and to amend and reenact §60A-9-4, §60A-9-5, and §60A-9-5a of said code, all relating to reducing the use of certain prescription drugs; providing for an exemption from registration for office based medication-assisted treatment program in specified cases; making clarifying amendments to provide for an exemption for medication-assisted treatment programs; clarifying physician responsibility for medication-assisted treatment; clarifying the definition of a pain management clinic; providing for emergency rulemaking; defining terms; providing for an advance directive; requiring consultation with patients prior to prescribing an opioid; limiting the amount of opioid prescriptions; requiring a narcotics contract in certain circumstances; providing exceptions to prescribing limits; providing for referral to a pain clinic or pain specialist; providing reports to licensing boards regarding abnormal or unusual prescribing practices; requiring insurance coverage for certain procedures to treat chronic pain; requiring the Board of Pharmacy to report quarterly to various licensing boards; exempting the Board of Pharmacy to certain purchasing requirement; clarifying who must report to the controlled substances monitoring database; clarifying the practice of acupuncture; and permitting the

investigation and discipline for abnormal and unusual prescribing and dispensing of prescription drugs.

With the recommendation that the committee substitute do pass; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

Tom Takubo,
Chair.

The bill (Com. Sub. for S. B. 273), under the original double committee reference, was then referred to the Committee on the Judiciary.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Senate Bill 341, Creating new court of WV Intermediate Court of Appeals.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill 341 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §3-10-3a of the Code of West Virginia, 1931, as amended; to amend and reenact §23-5-10 of said code, to amend said code by adding thereto a new section, designated §23-5-11a; to amend and reenact §29A-5-4 of said code; to amend and reenact §29A-6-1 of said code; to amend said code by adding thereto a new section, designated §51-2A-24; to amend and reenact §51-9-1a of said code; to amend said code by adding thereto a new article, designated §51-11-1, §51-11-2, §51-11-3, §51-11-4, §51-11-5, §51-11-6, §51-11-7, §51-11-8, §51-11-9, §51-11-10, §51-11-11; §51-11-12; §51-11-13, and §51-11-14; and to amend and reenact §58-5-1 of said code, all relating generally to the West Virginia Appellate Reorganization Act of 2018; terminating the Workers' Compensation Board of Review and transferring duties to the West Virginia Intermediate Court of Appeals; requiring board to dispose of cases by a certain date; requiring contested cases under State Administrative Procedures Act to go to the West Virginia Intermediate Court of Appeals; transferring jurisdiction for review of family court final orders from circuit courts to West Virginia Intermediate Court of Appeals; placing judges of West Virginia Intermediate Court of Appeals under the judicial retirement system; altering the residency requirements for membership on the Judicial Vacancy Advisory Commission; creating the West Virginia Intermediate Court of Appeals; providing a short title; providing legislative findings; defining terms; establishing and defining two geographical districts of the Intermediate Court of Appeals; requiring three judge panels for proceedings; authorizing jurisdiction of the Intermediate Court of Appeals over certain matters; specifically excluding certain matters from jurisdiction of the Intermediate Court of Appeals; providing eligibility criteria for judges of the Intermediate Court of Appeals; providing that no two judges of the Intermediate Court of Appeals may be residents of the same state senatorial district or of the same county; providing a process for appointment of judges to the Intermediate Court of Appeals to staggered judicial terms; providing that the Governor's appointments are subject to Senate confirmation; providing that judges of the Intermediate Court of Appeals may not be candidates for any elected office during judicial term; providing for temporary filling of judicial vacancy occurring before the expiration of an appointed judge's term; establishing certain requirements for the filing of appeals to the Intermediate Court

of Appeals; clarifying that an appeal bond may be required before appeal to the Intermediate Court of Appeals may take effect; requiring the chief judge of each Intermediate Court of Appeals district to publish and submit certain reports to the Legislature and Supreme Court of Appeals regarding pending cases; authorizing filing fees; providing for deposit of filing fees in a special revenue account to fund the State Police Forensic Laboratory; recognizing the constitutional authority of the West Virginia Supreme Court of Appeals to exercise administrative authority of the Intermediate Court of Appeals; providing that procedures and operations of the Intermediate Court of Appeals shall comply with rules promulgated by the Supreme Court of Appeals; requiring that appeals to the Intermediate Court of Appeals be filed with the Clerk of the Supreme Court of Appeals; providing that Intermediate Court of Appeals proceedings take place in publicly available facilities across the state; granting the Intermediate Court of Appeals discretion to require oral argument; authorizing the Administrative Director of the Supreme Court of Appeals to employ staff for Intermediate Court of Appeals operations; providing that the budget for Intermediate Court of Appeals operations shall be included in the appropriation for the Supreme Court of Appeals; authorizing the Intermediate Court of Appeals to issue opinions as binding precedent for respective districts; providing for discretionary review of Intermediate Court of Appeals decisions by Supreme Court of Appeals; authorizing an annual salary, retirement benefits, and reimbursement of expenses for judges of the Intermediate Court of Appeals; providing for reimbursement of expenses of Intermediate Court of Appeals staff; providing for sunset of the Intermediate Court of Appeals on certain date, unless continued by the Legislature; and providing that certain appeals are reviewed and a written decision issued by either the Intermediate Court of Appeals or the Supreme Court of Appeals, as a matter of right.

With the recommendation that the committee substitute do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Charles S. Trump IV,
Chair.

The bill (Com. Sub. for S. B. 341), under the original double committee reference, was then referred to the Committee on Finance.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Senate Bill 371, Relating to proceedings for voluntary custody for examination.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Takubo, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

Senate Bill 441, Relating to health care provider taxes.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Tom Takubo,
Chair.

The bill, under the original double committee reference, was then referred to the Committee on Finance.

The Senate proceeded to the sixth order of business.

On motions for leave, severally made, the following bills were introduced, read by their titles, and referred to the appropriate committees:

By Senators Gaunch, Boso, and Cline:

Senate Bill 464—A Bill to amend and reenact §5-5-2 of the Code of West Virginia, 1931, as amended, relating to changing the statutory payment date for incremental salary increases due state employees.

Referred to the Committee on Government Organization.

By Senators Trump, Boso, Ferns, Baldwin, and Cline:

Senate Bill 465—A Bill to amend and reenact §49-2-803 of the Code of West Virginia, 1931, as amended, relating generally to mandated reporting of child abuse and neglect; clarifying that sexual abuse and sexual assault constitute abuse of a child for reporting purposes; reducing the time period in which a mandated reporter shall report suspected abuse or neglect; requiring mandated reporters to directly report known or suspected abuse or neglect; eliminating particularized reporting requirements for education employees; eliminating certain exceptions to the reporting time limit; and clarifying that the duty to report is nondelegable.

Referred to the Committee on Education; and then to the Committee on the Judiciary.

By Senators Trump and Boso:

Senate Bill 466—A Bill to amend and reenact §54-2-12, §54-2-14, §54-2-14a, §54-2-16, §54-2-18, and §54-2-21 of the Code of West Virginia, 1931, as amended, all relating to bringing the statutory interest rate to be paid in condemnation cases into conformity with current statutory rates for other civil cases; and revising antiquated language to meet current legislative standards.

Referred to the Committee on the Judiciary; and then to the Committee on Finance.

By Senator Trump:

Senate Bill 467—A Bill to amend and reenact §29-21-6 and §29-21-13a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §29-21-9a, all relating generally to Public Defender Services; transferring initial authority to review, approve, modify, or refuse panel attorney vouchers from circuit courts to Public Defender

Services; providing for resubmission or reconsideration of vouchers previously modified or refused; establishing procedures for handling of modified or refused vouchers; maintaining final authority over payment of vouchers with circuit courts; authorizing the Executive Director of Public Defender Services, with approval of the Indigent Defense Commission, to contract for noncriminal legal services; requiring panel attorneys to maintain time-keeping records to enable the attorney to determine time expended on a daily basis; authorizing Governor by executive order to borrow funds from the Revenue Shortfall Reserve Fund to pay appointed counsel and establishing repayment requirements; revising the rates of compensation for various types of cases; and authorizing the executive director to promulgate emergency rules.

Referred to the Committee on the Judiciary; and then to the Committee on Finance.

By Senators Gaunch and Boso:

Senate Bill 468—A Bill to amend and reenact §12-4-7 of the Code of West Virginia, 1931, as amended, relating to changing the date for submission of the Auditor's annual report; adding the President of the Senate and the Speaker of the House of Delegates as recipients of the annual report; and adding requirement that certain salary information be included in the report for the prior calendar year.

Referred to the Committee on Government Organization.

By Senators Weld, Boso, Unger, Ferns, Maroney, Clements, and Cline:

Senate Bill 469—A Bill to amend and reenact §62-15A-1, §62-15A-2, and §62-15A-3 of the Code of West Virginia, 1931, as amended, relating to converting the Addiction Treatment Pilot Program into a permanent program.

Referred to the Committee on Health and Human Resources.

By Senators Ojeda, Baldwin, Beach, Jeffries, Palumbo, Stollings, and Woelfel:

Senate Bill 470—A Bill to amend and reenact §61-6-21 of the Code of West Virginia, 1931, as amended, relating to prohibiting civil rights violations based on gender identity or sexual orientation; criminal penalties; when evidence of constitutionally protected speech or associations is not admissible in criminal prosecutions; exceptions; providing for sentencing alternatives for persons convicted of violations; and designating amendments to this section as the Justice Through Grace in Communities Act.

Referred to the Committee on the Judiciary.

By Senators Palumbo, Baldwin, Beach, Clements, Jeffries, Maroney, Ojeda, Plymale, Stollings, Takubo, Weld, and Cline:

Senate Bill 471—A Bill to amend and reenact §5-11-2, §5-11-3, §5-11-4, §5-11-8, §5-11-9, and §5-11-13 of the Code of West Virginia, 1931, as amended; and to amend and reenact §5-11A-3, §5-11A-5, §5-11A-6, and §5-11A-7 of said code, all relating to unlawful discriminatory practices in categories covered by the Human Rights Act and the Fair Housing Act; prohibiting discrimination based upon age and sexual orientation, or gender identity; and defining "sexual orientation" and "gender identity".

Referred to the Committee on Government Organization; and then to the Committee on the Judiciary.

By Senators Blair, Unger, and Cline:

Senate Bill 472—A Bill to amend and reenact §16-2-14 of the Code of West Virginia, 1931, as amended, relating to requiring the Legislature to provide funds to the Department of Health and Human Resources so that it can provide the local boards of health funds for pay raises for their employees when the Legislature provides funds for across-the-board pay raises for state employees, and annually after that.

Referred to the Committee on Health and Human Resources; and then to the Committee on Government Organization.

By Senators Takubo, Ojeda, Stollings, Baldwin, and Cline:

Senate Bill 473—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-7b; to amend said code by adding thereto a new section, designated §9-5-20a; to amend said code by adding thereto a new section, designated §33-24-7q; to amend said code by adding thereto a new section, designated §33-25-8n; and to amend said code by adding thereto a new section, designated §33-25A-8p, all relating to requiring insurance coverage for the prescription drug Varenicline; prohibiting insurance plans from requiring use of other methods or prescriptions prior to coverage for Varenicline; placing similar requirements on the Public Employees Insurance Agency; placing similar requirements upon the state Medicaid program; allowing a generic alternative, should one become available; and allowing health care providers to provide other medically appropriate prescription drugs.

Referred to the Committee on Health and Human Resources.

By Senators Swope, Azinger, Blair, Boso, Clements, Drennan, Ferns, Gaunch, Karnes, Maynard, Rucker, Smith, Sypolt, Trump, Weld, Maroney, and Cline:

Senate Bill 474—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-22-4; and to amend and reenact §21-1C-5 of said code, all relating to prohibiting a governmental entity, which requires certain private companies to submit any document that includes records of actual wages paid to employees, from disclosing such document or information contained therein to any other entity or person; providing that any such document containing records of actual wages paid to employees shall be considered confidential and proprietary and may not be considered a public record; defining “governmental entity”; providing that any document containing records of actual wages paid to employees that is filed or submitted pursuant to the West Virginia Jobs Act may not be disclosed by the Division of Labor or a public authority to any other entity or person; and providing that any document submitted or filed pursuant to the West Virginia Jobs Act that includes records of actual wages paid to employees or information contained therein shall be considered confidential and proprietary and may not be considered a public record.

Referred to the Committee on the Workforce; and then to the Committee on Government Organization.

By Senators Woelfel, Baldwin, and Beach:

Senate Bill 475—A Bill to amend and reenact §19-12E-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §19-12E-5a, all relating generally to industrial hemp; authorizing the Commissioner of Agriculture to create and administer an industrial hemp seed certification program; authorizing the commissioner to obtain and develop seed varieties for industrial hemp production; authorizing imposition of a fee to be determined by the commissioner; authorizing emergency rulemaking and requiring legislative rulemaking; and requiring the program be consistent with federal law.

Referred to the Committee on Agriculture and Rural Development.

By Senators Sypolt, Boso, Maroney, and Clements:

Senate Bill 476—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §22C-9-6a and §22C-9-7a, all relating to permitting surface owners to seek damages resulting from oil and gas operations through the Oil and Gas Conservation Commission; permitting leaseholders to unitize drilling interests regardless of the type of well to be drilled; and requiring rulemaking.

Referred to the Committee on Energy, Industry, and Mining; and then to the Committee on the Judiciary.

By Senators Smith, Boso, Clements, Jeffries, Swope, Sypolt, and Cline:

Senate Bill 477—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13EE-1, relating to the creation of a five-year sunset on all tax credits and tax incentives established by the same chapter.

Referred to the Committee on Government Organization; and then to the Committee on Finance.

Senators Stollings, Boso, Unger, Beach, and Plymale offered the following resolution:

Senate Resolution 25—Designating February 2, 2018, as Dental Hygienists Day at the Legislature.

Whereas, Dental hygienists, as licensed oral health care professionals, actively promote oral health care and the prevention of oral disease. West Virginia currently has 1,412 total active dental hygienists; and

Whereas, As preventative specialists, dental hygienists contribute to the oral health of West Virginia residents and provide an essential service contributing to their total health; and

Whereas, Dental hygienists give their time and effort in order to provide oral health care to individuals of need, such as children, senior citizens, individuals with low income, and individuals with disabilities; and

Whereas, These services are essential in dental offices, public health facilities, schools, private organizations, and research facilities in providing the best possible oral health care for all citizens; and

Whereas, Promoting the importance of the issues and celebrating the successes of the profession and contributions of dental hygienists will lead to increased public awareness; therefore, be it

Resolved by the Senate:

That the Senate hereby designates February 2, 2018, as Dental Hygienists Day at the Legislature; and, be it

Further Resolved, That the Senate urges all citizens to recognize dental hygienists for the many valued services they provide and become more familiar with the practice of dental hygiene; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate representatives of Dental Hygienists Day.

At the request of Senator Stollings, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senator Stollings regarding the adoption of Senate Resolution 25 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, at 11:23 a.m., the Senate recessed to present Senate Resolution 25.

The Senate reconvened at 11:26 a.m. today and resumed business under the sixth order.

Petitions

Senator Woelfel presented a petition from Kevin Hughart and 2,300 West Virginia residents, opposing Senate Bill 270 (*Authorizing DNR implement silvicultural management for state park lands*).

Referred to the Committee on Natural Resources.

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for Senate Bill 10, Relating generally to PSC jurisdiction.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 10) passed with its title.

Ordered, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for Com. Sub. for Senate Bill 258, Exempting honorably discharged veterans from fees for license to carry deadly weapons.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Senator Weld requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate as he is a member of the United States Air Force Reserves.

The Chair replied that any impact on Senator Weld would be as a member of a class of persons and that he would be required to vote.

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 258) passed with its title.

Ordered, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for Senate Bill 267, Increasing salaries of certain state employees.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending extended discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 267 pass?”

Senator Palumbo requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate as his spouse is a public school employee.

The Chair replied that any impact on Senator Palumbo would be as a member of a class of persons and that he would be required to vote.

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 267) passed with its title.

Senator Ferns moved that the bill take effect July 1, 2018.

On this question, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 267) takes effect July 1, 2018.

Ordered, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Thereafter, at the request of Senator Ojeda, and by unanimous consent, the remarks by Senators Prezioso and Beach regarding the passage of Engrossed Committee Substitute for Senate Bill 267 were ordered printed in the Appendix to the Journal.

At the request of Senator Beach, unanimous consent being granted, the remarks by Senator Romano regarding the passage of Engrossed Committee Substitute for Senate Bill 267 were ordered printed in the Appendix to the Journal.

At the request of Senator Rucker, and by unanimous consent being granted, the remarks by Senators Maynard, Karnes, Azinger, Cline, and Takubo regarding the passage of Engrossed Committee Substitute for Senate Bill 267 were ordered printed in the Appendix to the Journal.

At the request of Senator Trump, unanimous consent being granted, the remarks by Senators Baldwin, Facemire, and Unger regarding the passage of Engrossed Committee Substitute for Senate Bill 267 were ordered printed in the Appendix to the Journal.

Eng. Com. Sub. for Senate Bill 268, Eliminating requirement that certain agencies purchase commodities produced on institutional farms.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 268) passed with its title.

Ordered, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Senate Bill 324, Removing restrictions where certain traditional lottery games may be played.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale,

Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel, and Carmichael (Mr. President)—28.

The nays were: Arvon, Azinger, Gaunch, Prezioso, and Unger—5.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 324) passed with its title.

Ordered, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Senate Bill 345, Authorizing DNR establish procedures and fee schedule for limited permit hunts.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 345) passed with its title.

Ordered, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Senate Bill 350, Eliminating obsolete requirement that Lottery Commission file racetrack video lottery game rules with Secretary of State.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 350) passed with its title.

Ordered, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Senate Bill 357, Relating generally to limited video lottery.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Arvon, Baldwin, Beach, Blair, Boso, Clements, Cline, Drennan, Facemire, Ferns, Jeffries, Karnes, Maroney, Maynard, Ojeda, Plymale, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel, and Carmichael (Mr. President)—27.

The nays were: Azinger, Boley, Gaunch, Palumbo, Prezioso, and Unger—6.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 357) passed with its title.

Ordered, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for Senate Bill 386, Decreasing and increasing appropriations from Treasury to Higher Education Policy Commission.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 386 pass?”

On the passage of the bill, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 386) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Arvon, Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Maroney, Maynard, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 386) takes effect from passage.

Ordered, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senator Plymale regarding the passage of Engrossed Committee Substitute for Senate Bill 386 were ordered printed in the Appendix to the Journal.

Eng. Senate Bill 393, Relating to compensation and composition of WV Racing Commission.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Ferns, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Eng. Senate Bill 430, Encouraging collaborative agreements between community and technical colleges and federally registered apprenticeship programs.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Ferns, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

The Senate proceeded to the ninth order of business.

Com. Sub. for Senate Bill 244, Specifying conditions for unlawful possession of firearm at school-sponsored activities.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Senate Bill 322, Relating to employees of Department of Agriculture.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Senate Bill 343, Limiting expenses in preparing list for notice to redeem.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Senate Bill 364, Allowing parent or legal guardian of homeschooled child provide signed statement for obtaining permit or license to operate motor vehicle.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Senate Bill 400, Prohibiting state licensing boards from hiring lobbyists.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Eng. Com. Sub. for House Bill 4020, Making technical corrections in the code when referencing chapter 49.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-4. Prosecutor's advisory council; victim advocates; participation in multidisciplinary planning process.

~~There is hereby created~~ The prosecutor's advisory council composed of elected prosecuting attorneys of each county of the state or a designated member of their staff is continued. The prosecutor's advisory council ~~shall conduct an initial meeting of all members not later than September 1, 1994, and shall meet not less than one time each year. At the initial meeting and annually thereafter,~~ Annually, the council shall elect from among its membership a chairman of the council who shall set the agenda for the council's meetings and shall appoint necessary committees and direct the work of the council in carrying out its duties under the provisions of this section.

The council shall provide advice, assistance, training, and leadership to the offices of the various county prosecuting attorneys of this state in criminal and civil cases which involve child abuse or neglect or sexual assault or sexual abuse of children. The council shall also provide advice and assistance to the secretary of the Department of Health and Human Resources in the implementation of a multidisciplinary planning process as set forth in ~~article five-d, chapter forty-nine~~ §49-4-401 through §49-4-413 of this code.

The council may seek funds and programs to provide each prosecuting attorney's office with a staff person to assist children who are crime victims to obtain services and assistance from other agencies and programs in the community. Prosecuting attorneys shall be reimbursed by their respective county commissions for necessary expenses actually incurred when attending meetings of the council.

The council may apply for and receive funds from any grant program of any agency or institution in the United States, public or private, to be used for carrying out the purposes of this section.

§7-4-5. Multidisciplinary investigative teams.

~~On or before January 1, 1995,~~ The prosecuting attorney of each county in the state shall ~~establish~~ maintain a multidisciplinary investigative team, in accordance with the provisions of ~~section three, article five-d, chapter forty-nine~~ §49-4-402 of this code.

ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.**§7-7-2. Establishment of county in-service training programs; further additional duties for prosecuting attorney in any county in excess of 200,000.**

(a) There is are hereby established county in-service training programs as hereinafter set forth.

(b) The Attorney General ~~is hereby authorized and directed to establish such~~ may establish any in-service training programs ~~as in his or her opinion that~~ will do most to assist the prosecuting attorneys in the performance of their duties. The Attorney General is authorized to accept any federal aid which may be made available or any financial assistance which may be available from any private nonprofit organization for the purposes of this section. The prosecuting attorney in any county having a population in excess of 200,000 shall also discharge the additional duties imposed upon him or her by the provisions of ~~section thirteen-a, article five, chapter forty-nine~~ §49-4-503 of this code.

(c) The State Auditor ~~is hereby authorized and directed to establish such~~ may establish any in-service training programs for county commissioners, county clerks, sheriffs, and their assistants and employees ~~as in his or her opinion that~~ will do most to modernize and improve the services of their respective offices. The State Auditor in conjunction with the West Virginia Supreme Court of Appeals ~~is authorized and directed to such~~ shall establish in-service training programs for circuit clerks and their assistants and employees. The State Tax Commissioner is authorized and directed to establish such in-service training programs for assessors and their assistants and employees. The State Tax Commissioner, State Auditor, and the West Virginia Supreme Court of Appeals are authorized to accept any federal aid which may be made available or any financial assistance which may be available from any private nonprofit organization for the purpose of this article.

(d) Each of the county officials mentioned in this section, and, at his or her option, one or more of his or her assistants, deputies, and employees, shall participate in the programs established under this section.

(e) The county commission ~~is authorized and directed to expend funds for the purpose of reimbursing such~~ shall reimburse officials and employees for the actual amount expended by them for food, lodging, and registration while in attendance at authorized training for the purpose of this section.

ARTICLE 10. HUMANE OFFICERS.**§7-10-2. Duty of humane officers; reporting requirement when abuse or neglect of individuals suspected; prohibition against interference with humane officers; penalties.**

(a) ~~It is the duty of Humane officers to~~ shall prevent the perpetration or continuance of any act of cruelty upon any animal and ~~to~~ investigate and, upon probable cause, ~~to~~ cause the arrest and assist in the prosecution of any person engaging in such cruel and forbidden practices. Upon reasonable cause, and, as provided by law, such officers have the right to access and ~~inspection~~ inspect records and property ~~as may be~~ reasonably necessary to any investigation.

(b) Whenever a humane officer, pursuant to an investigation of animal cruelty, forms a reasonable suspicion that a minor child, or incapacitated or elderly person, is the victim of abuse or neglect or has a suspicion of domestic violence, he or she shall report the suspicion and the grounds ~~therefor~~ for the suspicion. In the event of suspected child abuse or neglect, the humane officer shall report to the local child protective services agency of the Department of Health and Human Resources in accordance with the provisions of ~~section five, article six-a, chapter forty-nine~~ §49-2-809 of this code. In the event of suspected abuse or neglect of an incapacitated or elderly person, he or she shall report to the department's local adult protective services agency in accordance with the provisions of §9-6-11 of this code. In the event of suspected domestic violence, he or she shall report to the State Police in accordance with the provisions of §48-27-101 *et seq.* of this code.

(c) Any person who interferes with, obstructs or resists any humane officer in the discharge of his or her duty is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500 or confined in jail not more than 30 days, or both fined and confined. Any penalties imposed for a violation of this subsection shall be imposed in addition to any penalties the person incurs for cruel or inhumane treatment of any animal.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 11. THE CHILD PROTECTION ACT OF 2006.

§15-11-2. Legislative findings.

(a) The purpose of "The Child Protection Act of 2006" is to put in place a series of programs, criminal law revisions, and other reforms to provide and promote the ability of the children of this state to live their lives without being exposed and subjected to neglect and physical and sexual abuse. The targeted increases in terms of incarceration, enhanced treatment, post-release supervision, and new approaches toward the state's child protection system will, in the aggregate, strengthen government's ability to address this most serious problem. The Legislature finds that the broad reaching measures encompassed in this Act will provide for greater intervention among and punishment and monitoring of individuals who create a risk to our children's safety and well-being.

(b) The Legislature further finds that the following reforms implemented as part of this Act will provide protections to the children of this state and are all important to eliminate risks to children and are essential elements of "The Child Protection Act of 2006":

(1) Creating a special unit in the State Police specializing in the investigation of child abuse and neglect — §15-2-15 of this code;

(2) Modifying the Sex Offender Registration Act to ensure more effective registration, identification, and monitoring of persons convicted of sexual offenses — §15-12-1 *et seq.* of this code;

(3) Establishing the Child Abuse and Neglect Registry, requiring the registry to disclose information to certain state and local officials — §15-13-1 *et seq.* of this code;

(4) Providing for coded driver's licenses and nondriver identification cards to more easily identify sexually violent predators — §17B-2-3 of this code;

(5) Prohibiting contractors and service providers convicted of certain offenses from accessing school grounds and providing for the release of criminal history information by the central abuse registry to county school boards — §18-5-15c of this code;

(6) Establishing a task force to study the feasibility of constructing separate correctional facilities for the incarceration and treatment of sex offenders — §25-1-22 of this code;

(7) Requiring the State Police and the Department of Health and Human Resources to maintain statewide child abuse and neglect statistical ~~indexes~~ indices of all convictions and allegations, respectively — §15-2-15 and ~~section eleven, article six-a, chapter forty-nine~~ §49-2-813 of this code;

(8) Providing for increased terms of incarceration for first degree sexual assault and first degree sexual abuse committed against children under the age of 12 — §61-8B-3 and §61-8B-7 of this code;

(9) Eliminating eligibility of certain sex offenders for probation, home incarceration, and alternative sentences and providing for enhanced terms of incarceration for certain subsequent sex offenses committed by recidivist sex offenders — §61-8B-9a and §61-8B-9b of this code;

(10) Providing for polygraph examinations for certain sex offenders on probation, parole, or supervised release — §62-11D-1 *et seq.* of this code;

(11) Providing for electronic monitoring of certain sex offenders on probation, parole, and supervised release — §62-11D-1 *et seq.* of this code;

(12) Establishing a task force to develop measures aimed at managing sexually violent predators released from confinement — §62-11E-1 *et seq.* of this code;

(13) Making psychiatric evaluations a condition of probation eligibility for certain sex offenders — §62-12-2 of this code;

(14) Authorizing the Department of Health and Human Resources to establish qualifications for sex offender treatment programs and counselors — §62-12-2 and §62-12-26 of this code;

(15) Providing for extended supervision of certain offenders and supervised release requirements for sexually violent offenders — §62-12-26 of this code; and

(16) Providing for prerelease risk assessments of certain sex offenders — §62-12-27 of this code.

(c) In addition, the Legislature finds that those enhanced terms of incarceration and post-conviction measures provided for in this Act which impact certain offenders convicted of sexual offenses against adults are necessary and appropriate to protect children from neglect and physical and sexual abuse given that: (1) Clinical research indicates that a substantial percentage of sexual offenders “cross over” among age groups in selecting their victims; (2) many of the risk factors prevalent among sex offenders that “cross over” (e.g., substance abuse, lack of empathy toward victim, inability to control inappropriate impulses, childhood abuse) also are prevalent among perpetrators of child abuse and neglect; and (3) enhanced terms of incarceration, post-conviction supervision, monitoring, and treatment measures will enable the criminal justice

system to identify and address those “cross over” offenders before they can victimize additional children.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-15. State Police Child Abuse and Neglect Investigations Unit.

(a) The superintendent shall ~~establish~~ maintain a special unit of the State Police called the Child Abuse and Neglect Investigations Unit. The purpose of the unit is to focus on identifying, investigating, and prosecuting criminal child abuse and neglect cases, in coordination with Child Protective Services, established pursuant to ~~section nine, article six-a, chapter forty-nine~~ §49-2-802 of this code. The unit shall assist other State Police members with child abuse or neglect investigations as well as the Division of Child Protective Services. The unit may provide training, technical expertise, and coordination of services for other law-enforcement agencies, Child Protective Services caseworkers, prosecuting attorneys, and multidisciplinary teams established pursuant to the provisions of ~~section two, article five-d, chapter forty-nine~~ §49-4-402 of this code, to identify, investigate, report, and prosecute criminal child abuse and criminal child neglect cases. However, nothing in this section may be construed to mean that the unit will assume the duties or investigations of other State Police members or other law-enforcement officers.

(b) The unit ~~will comprise~~ shall consist, at a minimum, six members of the State Police. The superintendent shall assign a unit director and ~~shall assign five~~ regional members ~~regionally~~, to be dedicated and trained to assist county Child Protective Services Offices and caseworkers in investigating and coordinating with other law-enforcement personnel, cases of suspected child abuse or neglect. Cases to be investigated include allegations received pursuant to ~~§49-6A-2~~ §49-2-803 of this code, and any other credible child abuse or neglect allegations.

(c) The unit director's duties include:

- (1) Overseeing State Police members assigned to the unit;
- (2) Coordinating activities of the unit with Child Protection Services;
- (3) Assisting Child Protective Services in developing and refining protocols for improving identification and prosecution of suspected criminal acts of child abuse or neglect; and
- (4) Assuring that all other directives and responsibilities of the unit are fulfilled.

(d) The unit shall maintain a statewide statistical index on child abuse and neglect convictions resulting from convictions for violations of §61-8D-2, §61-8D-2a, §61-8D-3, §61-8D-3a, §61-8D-4 and §61-8D-4a of this code, to monitor the timely and proper investigation and disposition of child abuse or neglect cases. The statistical data index maintained by the unit shall not contain information of a specific nature that would identify individual cases or persons.

(e) On or before December 31, of each year, the unit director shall submit an annual report to the Joint Committee on Government and Finance. The annual report is to include the statistical index required under the provisions of subsection (d) of this section, and may include recommendations for statutory or program reforms that will assist the unit and further promote the goals of the unit. The report may not contain information of a specific nature that would identify individual cases or persons.

(f) Every state law-enforcement agency of this state shall periodically provide statistical information regarding child abuse and neglect cases investigated and prosecuted by that law-enforcement agency to the unit.

(g) The superintendent may propose rules for legislative approval or procedural rules as necessary to effectuate the provisions of this section in accordance with the provisions of §29A-3-1 *et seq.* of this code. The superintendent shall provide forms to law-enforcement agencies, circuit clerks, and parole officers to facilitate submission of appropriate information necessary to prepare the statistical reports required by this section.

(h) There is ~~hereby established~~ continued a special account in the state Treasury, into which shall be deposited any gifts, grants or donations made to the unit, and any other funds directed to be deposited into the account by appropriation of the Legislature, and to be expended for the purposes of this section pursuant to appropriation of the Legislature.

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-1. Definitions.

The following ~~words~~ terms when used in this article have meanings ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(a) “Central abuse registry” or “registry” means the registry created by this article which ~~shall contain~~ contains the names of individuals who have been convicted of a felony or a misdemeanor offense constituting abuse, neglect, or misappropriation of the property of a child or an incapacitated adult or an adult receiving behavioral health services.

(b) “Child abuse and neglect” or “child abuse or neglect” means those terms as defined in ~~section three, article one, chapter forty-nine~~ §49-1-201 of this code, and shall include any act with respect to a child which is a crime against the person pursuant to §61-2-1 *et seq.* of this code, any act which is unlawful pursuant to §61-8D-1 *et seq.* of this code and any offense with respect to a child which is enumerated in §15-2C-3 of this code.

(c) “Abuse or neglect of an incapacitated adult” means “abuse,” “neglect,” and “incapacitated adult” as those terms are defined in §9-6-1 of this code, and shall include any act with respect to an incapacitated adult which is a crime against the person pursuant to §61-2-1 *et seq.* of this code, and any offense with respect to an incapacitated adult which is enumerated in §15-2C-3 of this code.

(d) “Adult receiving behavioral health services” means a person over the age of 18 years who is receiving any behavioral health service from a licensed behavioral health provider or any behavioral health provider whose services are paid for, in whole or in part, by Medicaid or Medicare.

(e) “Conviction” of a felony or a misdemeanor means an adjudication of guilt by a court or jury following a hearing on the merits, or entry of a plea of guilty or nolo contendere.

(f) “Residential care facility” means any facility where a child or an incapacitated adult or an adult receiving behavioral health services resides which is subject to registration, licensure, or certification by the Department of Health and Human Resources, and ~~shall include~~ includes nursing homes, personal care homes, residential board and care homes, adult family care homes,

group homes, legally unlicensed service providers, residential child care facilities, family based foster care homes, specialized family care homes, and intermediate care facilities for the mentally retarded.

(g) "Misappropriation of property" means any act which is a crime against property under §61-3-1 *et seq.* of this code with respect to a child in a residential care facility or an incapacitated adult or an adult receiving behavioral health services in a residential care facility or a child or an incapacitated adult or an adult receiving behavioral health services who is a recipient of home care services.

(h) "Home care" or "home care services" means services provided to children or incapacitated adults or adults receiving behavioral health services in the home through a hospice provider, a community care provider, a home health agency, through the Medicaid waiver program, or through any person when that service is reimbursable under the state Medicaid program.

(i) "Requester" means the West Virginia Department of Education, any residential care facility, any state licensed day care center, any qualified entity as defined in this section, or any provider of home care services or an adult receiving behavioral health services, providing to the Central Abuse Registry the name of an individual and other information necessary to identify that individual, and either: (1) Certifying that the individual is being considered for employment or service as a volunteer by the requester or for a contractual relationship with the requester ~~wherein~~ where the individual will provide services to a child or an incapacitated adult or an adult receiving behavioral health services for compensation; or contractors and vendors who have or may have unsupervised access to the child, disabled, or elderly person for whom the qualified entity provides care; or (2) certifying that an allegation of abuse, neglect, or misappropriation of property has been made against the individual.

(j) "Qualified entity" means any business, agency, or organization that provides care, treatment, education, training, instruction, supervision, or recreation for children, the elderly, or individuals with disabilities and is a public, private, or not-for-profit entity within the State of West Virginia and meets the definition of qualified entity under the federal National Child Protection Act of 1993; P.L. 103-209 as amended by the Volunteers for Children Act; P.L. 105-251.

ARTICLE 9. GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION.

§15-9-3. Ascertaining compliance with applicable standards in juvenile detention and correctional facilities.

The Governor's Committee on Crime, Delinquency and Correction or its designee shall ascertain the compliance of juvenile detention and juvenile correctional facilities operated by or under contract with the Division of Juvenile Services, created pursuant to ~~section two, article five-e, chapter forty-nine~~ §49-2-902 of this code, with standards for the structure, physical plant, operation, and maintenance of the facilities, promulgated by the juvenile facility standards commission, pursuant to §31-20-9a of this code: *Provided*, That ~~such~~ the review shall not include educational programs in ~~such~~ the facilities.

ARTICLE 11. PAYMENT OF FUNERAL EXPENSES.

§15-11-2. Payment of funeral expenses of law-enforcement, safety, and emergency workers killed in the line of duty.

(a) The Secretary of Military Affairs and Public Safety shall, upon written request, direct payment from the fund in the form of a draft as provided in this article up to and including an amount not exceeding \$8,000 for the reasonable funeral expenses, including burial expenses, of a law-enforcement, safety, or emergency worker killed on or after January 1, 1999, while carrying out official duties: *Provided*, That ~~no~~ funds shall not be expended for any funeral expense that is otherwise payable pursuant to the provisions of §23-4-1 *et seq.* of this code, as amended, or other benefit programs established by a provision of this code which does not involve employee participation: *Provided, however*, That where other funds for funeral expenses are provided pursuant to the laws of this state, from whatever source, which amount to less than \$8,000, funds provided by the provisions of this section shall be expended so as to ensure that at least \$8,000 is available for reasonable funeral expenses. The secretary shall direct payment of the funeral expenses upon written request of an employer or head of a volunteer organization, as is appropriate pursuant to this article, certifying that the individual for whom funeral expenses are requested was killed while performing official duties.

(b) The secretary shall supply the draft in the name of the person contracting for the funeral services and, if known, the service provider to the employer or agency head making the request who shall tender the draft to the person who contracted for the services.

(c) For the purposes of this section, “law-enforcement, safety, or emergency worker” means:

(1) Any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests, and enforce the laws of the state or any county or municipality of the state, other than parking ordinances, and including those persons employed as security officers at municipal, county, regional, or state offices, authorities or institutions, although their employers may not be public law-enforcement agencies, employed by the Hatfield-McCoy Regional Recreation Authority, and members of the West Virginia National Guard while engaged in active duty service: *Provided*, That this section does not apply to those persons employed by private security firms or agencies;

(2) Any state, regional, county, or municipal correctional employee;

(3) Any firefighter employed by the state or any political subdivision of the state and any volunteer firefighter performing as a member of a volunteer fire department;

(4) Any “emergency medical services personnel”, as defined in §16-4C-3 of this code, employed by or volunteering for any state agency or institution or political subdivision of the state; or

(5) Any probation officer appointed under the provisions of either §62-12-5 or ~~section fifteen, article five, chapter forty-nine~~ §49-4-719 of this code.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2F. PARENTAL NOTIFICATION OF ABORTIONS PERFORMED ON UNEMANCIPATED MINORS.

§16-2F-2. Definitions.

For purposes of this article, unless the context in which used clearly requires otherwise:

As used in this article:

(1) "Abortion" means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a female known to be pregnant and with intent to cause the expulsion of a fetus other than by live birth. This article does not prevent the prescription, sale, or transfer of intrauterine contraceptive devices, other contraceptive devices, or other generally medically accepted contraceptive devices, instruments, medicines or drugs for a female who is not known to be pregnant and for whom the contraceptive devices, instruments, medicines or drugs were prescribed by a physician solely for contraceptive purposes and not for the purpose of inducing or causing the termination of a known pregnancy.

(2) "Medical emergency" means the same as that term is defined in §16-2M-2 of this code.

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

(4) "Unemancipated minor" means any person less than 18 years of age who is not, or has not been, married, who is under the care, custody, and control of the person's parent or parents, guardian, or court of competent jurisdiction pursuant to applicable federal law or as provided in ~~section twenty-seven, article seven, chapter forty-nine~~ §49-4-115 of this code.

ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS CONFIDENTIALITY ACT.

§16-3C-1. Definitions.

When used in this article:

(a) "AIDS" means acquired immunodeficiency syndrome.

(b) "Bureau" means the Bureau for Public Health.

(c) "Commissioner" means the commissioner of the Bureau for Public Health.

(d) "Convicted" includes pleas of guilty and pleas of nolo contendere accepted by the court having jurisdiction of the criminal prosecution, a finding of guilty following a jury trial, or a trial to a court and an adjudicated juvenile offender as defined in ~~sections two and four, article one, chapter forty-nine~~ §49-1-202 of this code.

(e) "Department" means the State Department of Health and Human Resources.

(f) "Funeral director" has the same meaning ascribed to ~~such~~ that term in §30-6-3 of this code.

(g) "Funeral establishment" has the same meaning ascribed to that term in §30-6-3 of this code.

(h) "HIV" means the human immunodeficiency virus identified as the causative agent of AIDS.

(i) "HIV-related test" means a test for the HIV antibody or antigen or any future valid test approved by the bureau, the federal drug administration, or the Centers for Disease Control and Prevention.

(j) "Health facility" means a hospital, nursing home, physician's office, clinic, blood bank, blood center, sperm bank, laboratory, or other health care institution.

(k) "Health care provider" means any physician, dentist, nurse, paramedic, psychologist, or other person providing medical, dental, nursing, psychological, or other health care services of any kind.

(l) "Health Information Exchange" means the electronic movement of health-related information in accord with law and nationally recognized standards.

(m) "High risk behavior" means behavior by a person including, but not limited to: (i) Unprotected sex with a person who is living with HIV; (ii) unprotected sex in exchange for money or drugs; (iii) unprotected sex with multiple partners; (iv) anonymous unprotected sex; (v) or needle sharing; (vi) diagnosis of a sexually transmitted disease; or (vii) unprotected sex or sharing injecting equipment in a high HIV prevalence setting or with a person who is living with HIV.

(n) "Medical or emergency responders" means paid or volunteer firefighters, law-enforcement officers, emergency medical technicians, paramedics, or other emergency service personnel, providers, or entities acting within the usual course of their duties; good samaritans and other nonmedical and nonemergency personnel providing assistance in emergencies; funeral directors; health care providers; the commissioner of the Bureau for Public Health; and all of their employees ~~thereof~~ and volunteers ~~associated therewith~~.

(o) "Patient" or "test subject" or "subject of the test" means the person upon whom ~~a~~ an HIV test is performed, or the person who has legal authority to make health care decisions for the test subject.

(p) "Permitted purpose" is a disclosure permitted by the Health Insurance Portability and Accountability Act of 1996 as amended, or a disclosure consented to or authorized by a patient or test subject.

(q) "Person" includes any natural person, partnership, association, joint venture, trust, public or private corporation, or health facility.

(r) "Release of test results" means a permitted or authorized disclosure of HIV-related test results.

(s) "Significant exposure" means:

(1) Exposure to blood or body fluids through needlestick, instruments, sharps, surgery, or traumatic events; ~~or~~

(2) Exposure of mucous membranes to visible blood or body fluids, to which universal precautions apply according to the national Centers for Disease Control and Prevention, and laboratory specimens that contain HIV (e.g. suspensions of concentrated virus); or

(3) Exposure of skin to visible blood or body fluids, when the exposed skin is chapped, abraded, or afflicted with dermatitis or the contact is prolonged or involving an extensive area.

(t) "Source patient" means any person whose body fluids have been the source of a significant exposure to a medical or emergency responder.

(u) "Targeted testing" means performing an HIV-related test for sub-populations at higher risk, typically defined on the basis of behavior, clinical, or demographic characteristics.

(v) "Victim" means the person or persons to whom transmission of bodily fluids from the perpetrator of the crimes of sexual abuse, sexual assault, incest, or sexual molestation occurred or was likely to have occurred in the commission of such crimes.

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-3. Use or possession of tobacco or tobacco products, alternative nicotine products or vapor products by persons under the age of 18 years; penalties.

~~No~~ A person under the age of 18 years shall not have on or about his or her person or premises or use any cigarette, or cigarette paper, or any other paper prepared, manufactured or made for the purpose of smoking any tobacco products, in any form; any pipe, snuff, chewing tobacco, tobacco product, or tobacco-derived product: *Provided*, That minors participating in the inspection of locations where tobacco products or tobacco-derived products are sold or distributed pursuant to §16-9A-7 of this code is not considered to violate the provisions of this section. Any person violating the provisions of this section shall for the first violation be fined \$50 and be required to serve eight hours of community service; for a second violation, the person shall be fined \$100 and be required to serve 16 hours of community service; and for a third and each subsequent violation, the person shall be fined \$200 and be required to serve 24 hours of community service. Notwithstanding the provisions of ~~section two, article five, chapter forty-nine~~ §49-4-701 of this code, the magistrate court has concurrent jurisdiction.

ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.

§16-30-3. Definitions.

For the purposes of this article:

(a) "Actual knowledge" means the possession of information of the person's wishes communicated to the health care provider orally or in writing by the person, the person's medical power of attorney representative, the person's health care surrogate, or other individuals resulting in the health care provider's personal cognizance of these wishes. Constructive notice and other forms of imputed knowledge are not actual knowledge.

(b) "Adult" means a person who is 18 years of age or older, an emancipated minor who has been established as such pursuant to the provisions of ~~section twenty-seven, article seven, chapter forty-nine~~ §49-4-115 of this code, or a mature minor.

(c) "Advanced nurse practitioner" means a registered nurse with substantial theoretical knowledge in a specialized area of nursing practice and proficient clinical utilization of the knowledge in implementing the nursing process, and who has met the further requirements of ~~title 19, legislative rules for the~~ the West Virginia board of examiners for registered professional nurses, series 7 rule, advanced practice registered nurse, 19CSR 7, who has a mutually agreed upon association in writing with a physician, and has been selected by or assigned to the person and has primary responsibility for treatment and care of the person.

(d) "Attending physician" means the physician selected by or assigned to the person who has primary responsibility for treatment and care of the person and who is a licensed physician. If

more than one physician shares that responsibility, any of those physicians may act as the attending physician under this article.

(e) “Capable adult” means an adult who is physically and mentally capable of making health care decisions and who is not considered a protected person pursuant to the provisions of chapter 44A of this code.

(f) “Close friend” means any adult who has exhibited significant care and concern for an incapacitated person who is willing and able to become involved in the incapacitated person’s health care and who has maintained regular contact with the incapacitated person so as to be familiar with his or her activities, health, and religious and moral beliefs.

(g) “Death” means a finding made in accordance with accepted medical standards of either: (1) The irreversible cessation of circulatory and respiratory functions; or (2) the irreversible cessation of all functions of the entire brain, including the brain stem.

(h) “Guardian” means a person appointed by a court pursuant to the provisions of chapter 44A of this code who is responsible for the personal affairs of a protected person and includes a limited guardian or a temporary guardian.

(i) “Health care decision” means a decision to give, withhold, or withdraw informed consent to any type of health care, including, but not limited to, medical and surgical treatments, including life-prolonging interventions, psychiatric treatment, nursing care, hospitalization, treatment in a nursing home or other facility, home health care, and organ or tissue donation.

(j) “Health care facility” means a facility commonly known by a wide variety of titles, including, but not limited to, hospital, psychiatric hospital, medical center, ambulatory health care facility, physicians’ office and clinic, extended care facility operated in connection with a hospital, nursing home, a hospital extended care facility operated in connection with a rehabilitation center, hospice, home health care, and other facility established to administer health care in its ordinary course of business or practice.

(k) “Health care provider” means any licensed physician, dentist, nurse, physician’s assistant, paramedic, psychologist, or other person providing medical, dental, nursing, psychological or other health care services of any kind.

(l) “Incapacity” means the inability because of physical or mental impairment to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented, and to communicate that choice in an unambiguous manner.

(m) “Life-prolonging intervention” means any medical procedure or intervention that, when applied to a person, would serve to artificially prolong the dying process or to maintain the person in a persistent vegetative state. Life-prolonging intervention includes, among other things, nutrition and hydration administered intravenously or through a feeding tube. The term “life-prolonging intervention” does not include the administration of medication or the performance of any other medical procedure considered necessary to provide comfort or to alleviate pain.

(n) “Living will” means a written, witnessed advance directive governing the withholding or withdrawing of life-prolonging intervention, voluntarily executed by a person in accordance with the requirements of §16-30-4 of this code.

(o) "Mature minor" means a person, less than 18 years of age, who has been determined by a qualified physician, a qualified psychologist, or an advanced nurse practitioner to have the capacity to make health care decisions.

(p) "Medical information" or "medical records" means and includes without restriction any information recorded in any form of medium that is created or received by a health care provider, health care facility, health plan, public health authority, employer, life insurer, school, or university or health care clearinghouse that relates to the past, present or future physical or mental health of the person, the provision of health care to the person, or the past, present, or future payment for the provision of health care to the person.

(q) "Medical power of attorney representative" or "representative" means a person, 18 years of age or older, appointed by another person to make health care decisions pursuant to the provisions of §16-30-6 of this code or similar act of another state and recognized as valid under the laws of this state.

(r) "Parent" means a person who is another person's natural or adoptive mother or father or who has been granted parental rights by valid court order and whose parental rights have not been terminated by a court of law.

(s) "Persistent vegetative state" means an irreversible state as diagnosed by the attending physician or a qualified physician in which the person has intact brain stem function but no higher cortical function and has neither self-awareness or awareness of the surroundings in a learned manner.

(t) "Person" means an individual, a corporation, a business trust, a trust, a partnership, an association, a government, a governmental subdivision or agency, or any other legal entity.

(u) "Physician orders for scope of treatment (POST) form" means a standardized form containing orders by a qualified physician that details a person's life-sustaining wishes as provided by §16-30-25 of this code.

(v) "Principal" means a person who has executed a living will or medical power of attorney.

(w) "Protected person" means an adult who, pursuant to the provisions of chapter 44A of this code, has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to an extent that the individual lacks the capacity to: (1) Meet the essential requirements for his or her health, care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or (2) manage property or financial affairs to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator.

(x) "Qualified physician" means a physician licensed to practice medicine who has personally examined the person.

(y) "Qualified psychologist" means a psychologist licensed to practice psychology who has personally examined the person.

(z) "Surrogate decisionmaker" or "surrogate" means an individual 18 years of age or older who is reasonably available, is willing to make health care decisions on behalf of an incapacitated person, possesses the capacity to make health care decisions, and is identified or selected by

the attending physician or advanced nurse practitioner in accordance with the provisions of this article as the person who is to make those decisions in accordance with the provisions of this article.

(aa) "Terminal condition" means an incurable or irreversible condition as diagnosed by the attending physician or a qualified physician for which the administration of life-prolonging intervention will serve only to prolong the dying process.

ARTICLE 47. ALCOHOL AND DRUG OVERDOSE PREVENTION AND CLEMENCY ACT.

§16-47-5. Immunity, alternative sentencing and clemency options for a person for whom emergency medical assistance was sought.

(a) The immunity provisions in §16-47-4(a) of this code extend to the person for whom emergency medical assistance was sought if, ~~subsequent to~~ after receiving emergency medical assistance, the person participates in, complies with, and completes a substance abuse treatment or recovery program approved by the court. Alternatively, a court may consider the following alternative sentencing and clemency options:

(1) Deferred prosecution under §60-6-26 or ~~under~~ §60A-4-407 of this code;

(2) Pretrial diversion under §61-11-22 of this code;

(3) Adjudication in drug court under §62-15-1 *et seq.* of this code or ~~under section two-b, article five, chapter forty-nine~~ §49-4-703 of this code; or

(4) Any other appropriate form of alternative sentencing or rehabilitation permitted by this code, including, but not limited to:

(A) Probation;

(B) Conditional discharge under §60-6-26 of this code; or

(C) The weekend jail program, the work program or the community service program under §62-11A-1a of this code.

(b) Notwithstanding any other provision of this section to the contrary, a person who may seek immunity or clemency pursuant to subsection (a) of this section and is charged with an offense not exempted by §16-47-4(a) of this code may enter a plea of guilty to an offense exempted by §16-47-4(a) of this code if the person, after consultation with his or her attorney, so desires.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-6a. Taking a child into custody; driving a motor vehicle with any amount of blood alcohol.

(a) A preliminary breath analysis may be administered to a child whenever a law-enforcement official has reasonable cause to believe the child to have been driving a motor vehicle with any amount of alcohol in his or her blood for the purpose of determining the child's blood alcohol content. ~~Such~~ The breath analysis must be administered as soon as possible after the law-

enforcement officer arrives at a reasonable belief that the child has been driving a motor vehicle with any amount of alcohol in his or her blood. Any preliminary breath analysis administered pursuant to this subsection must be administered with a device and in a manner approved by the division of health for that purpose. If a preliminary breath analysis is administered, the results shall be used solely for the purpose of guiding the officer in deciding whether the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of .0002 of one percent or more, by weight, and should, therefore, be taken into custody to administer a secondary test in accordance with the provisions of this section.

(b) A child may be taken into custody by a law-enforcement official without a warrant or court order if the official has reasonable grounds to believe the child to have been driving a motor vehicle with any amount of alcohol in his or her blood. If a preliminary breath analysis is administered and the results of the analysis indicate that the child has an alcohol concentration in his or her blood of less than .0002 of one percent, by weight, the child may not be taken into custody unless other grounds exist under ~~subsection (b), section eight, article five, chapter forty-nine~~ §49-4-705(b) of this code. Upon taking a child into custody pursuant to the provisions of this section, the official shall take all reasonable steps to cause notification to be made to the child's parent or custodian or, if the parent or custodian cannot be located, to a close relative.

(c) Upon taking a child into custody pursuant to this section, the official shall take the child to a facility where a secondary test of the child's blood or urine may be administered at the direction of the official or a test of the child's breath may be administered by the official. The law-enforcement agency by which such law-enforcement official is employed shall designate whether the secondary test is a test of either blood, breath, or urine: *Provided*, That if the test ~~so designated~~ is a blood test and the child refuses to submit to the blood test, then the law-enforcement official taking the child into custody shall designate in lieu thereof a breath test to be administered. Notwithstanding the provisions of §17C-5-7 of this code, a refusal to submit to a blood test only shall not result in the revocation of the child's license to operate a motor vehicle in this state. Any child taken into custody pursuant to this section shall be given a written statement advising him or her that a refusal to submit to a secondary test of either blood, breath, or urine, as finally designated by the law-enforcement agency or official in accordance with this subsection, will result in the suspension of his or her license to operate a motor vehicle in this state for a period of at least 30 days or a revocation of the license for a period up to life.

(d) If the law-enforcement official taking the child into custody is employed by a law-enforcement agency which does not have available the testing equipment or facilities necessary to conduct any secondary breath test which may be administered pursuant to the provisions of this section, then the official who took the child into custody may request another qualified person to administer a secondary breath test: *Provided*, That the breath test shall be administered in the presence of the official who took the child into custody. The results of ~~such the~~ breath test may be used in evidence to the same extent and in the same manner as if ~~such the~~ test had been conducted by the law-enforcement official who took the child into custody. The qualified person administering the breath test must be a member of the West Virginia state police, the sheriff of the county ~~wherein~~ where the child was taken into custody, or any deputy of ~~such the~~ sheriff or a law-enforcement official of another municipality within the county wherein the child was taken into custody. Only the person actually administering the secondary breath test is competent to testify as to the results and the veracity of the test. If the secondary test is a blood test, the test shall be conducted in accordance with the provisions of §17C-5-6 of this code.

(e) After taking the child into custody, if the law-enforcement official has reasonable cause to believe that the act of the child in driving the motor vehicle is such that it would provide grounds

for arrest for an offense defined under the provisions of §17C-5-2 of this code if the child were an adult, then the official shall proceed to treat the child in the same manner as any other child taken into custody without a warrant or court order, in accordance with the provisions of §17C-5-8 of this code.

(f) If the results of any secondary test administered pursuant to this section indicate that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of .0008 of one percent or less, by weight, and if the law-enforcement official does not have reasonable cause to believe that the act of the child in driving the motor vehicle is such that it would provide grounds for arrest for an offense defined under the provisions of §17C-5-2 of this code if the child were an adult, then the official shall release the child: *Provided*, That if the results of any secondary test administered pursuant to this section indicate that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of .0002 of one percent or more, by weight, the child shall only be released to a parent or custodian, or to some other responsible adult.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15c. County boards of education; training in prevention of child abuse and neglect and child assault; regulations; funding.

(a) In recognition of the findings of the Legislature as set forth in ~~section one, article six-c, chapter forty-nine §49-2-401~~ of this code, the Legislature further finds that public schools are able to provide a special environment for the training of children, parents, and school personnel in the prevention of child abuse and neglect and child assault and that child abuse and neglect prevention and child assault prevention programs in the public schools are an effective and cost-efficient method of reducing the incidents of child abuse and neglect, promoting a healthy family environment, and reducing the general vulnerability of children.

(b) County boards of education shall ~~be required~~, to the extent funds are provided, to establish programs for the prevention of child abuse and neglect and child assault. ~~Such~~ The programs shall be provided to ~~pupils~~ students, parents and school personnel as ~~deemed~~ considered appropriate. ~~Such~~ The programs shall ~~be in compliance~~ comply with ~~regulations to be~~ rules developed by the state Board of Education with the advice and assistance of the state Department of Health and Human Resources and the West Virginia State Police: *Provided*, That any ~~such~~ programs which substantially comply with the ~~regulations~~ rules adopted by the board and were in effect prior to the adoption of the ~~regulations~~ rules may be continued.

(c) Funds for implementing the child abuse and neglect prevention and child assault prevention programs may be allocated to the county boards of education from the children's trust fund established pursuant to the provisions of ~~article six-c, chapter forty-nine §49-2-401~~ of this code or appropriated for such purpose by the Legislature.

(d) County boards of education shall request from the state Criminal Identification Bureau the record of any and all criminal convictions relating to child abuse, sex-related offenses, or possession of controlled substances with intent to deliver ~~same~~ the controlled substances or all of its future employees. This request shall be made immediately after the effective date of this section, and thereafter as warranted.

(e) Contractors or service providers or their employees may not make direct, unaccompanied contact with students or access school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers, or employees have not previously been convicted of a qualifying offense, as defined in §15-12-2 of this code. For the purposes of this section, contractor and service provider shall be limited to any vendor, individual, or entity under contract with a county school board. County school boards may require contractors and service providers to verify the criminal records of their employees before granting ~~the above-mentioned~~ contact or access. Where prior written consent is obtained, county school boards may obtain information from the Central Abuse Registry regarding contractors, service providers, and their employees for the purposes of this subsection. Where a contractor or service provider gives his or her prior written consent, the county school board also may share information provided by the Central Abuse Registry with other county school boards for the purposes of satisfying the requirements of this subsection. ~~The requirements of this subsection shall not go into effect until July 1, 2007.~~

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-6a. Incentive for county board participation in circuit court juvenile probation truancy programs.

A county board that enters into a truancy program agreement with the circuit court of the county that (1) provides for the referral of truant juveniles for supervision by the court's probation office pursuant to ~~section eleven, article five, chapter forty-nine~~ §49-4-711 of this code and (2) requires the county board to pay for the costs of the probation officer or officers assigned to supervise truant juveniles, shall be reimbursed for one half of the costs of the probation officer or officers, subject to appropriation of the Legislature for this purpose to the West Virginia Department of Education. For any year in which the funds appropriated are insufficient to cover the reimbursement costs, the county's costs shall be reimbursed pro rata.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1d. Return to school through Juvenile Drug Court for certain students.

(a) When a student is expelled from school pursuant to §18A-5-1a of this code, the county board, county superintendent, or principal for the school from which the student was expelled or the parent, guardian, or custodian may refer the student to a Juvenile Drug Court, operated pursuant to ~~section two-b, article five, chapter forty-nine~~ §49-4-703 of this code. Upon such referral, the judge assigned to Juvenile Drug Court shall determine whether the student is an appropriate candidate for Juvenile Drug Court.

(b) If the judge determines the student is an appropriate candidate for Juvenile Drug Court, then the court has jurisdiction over the student in the same manner as it has jurisdiction over all other persons in Juvenile Drug Court. ~~Such~~ Jurisdiction over students includes the ability to issue any of the various sanctions available to the Juvenile Drug Court, including temporary detention.

(c)(1) Successful completion of Juvenile Drug Court or certification by the Juvenile Drug Court judge that the student is making satisfactory progress toward successful completion of Juvenile Drug Court warrants consideration for reduction of the expulsion period, pursuant to §18A-5-1a of this code.

(2) The Juvenile Drug Court shall notify the county superintendent of ~~such the~~ completion or certification. The county superintendent shall arrange a meeting with the Juvenile Drug Court treatment team, the court, and the student assistance team of the school from which the student was expelled to discuss the student's history, progress, and potential for improvement.

(3) The student assistance team shall evaluate and recommend whether the student's expulsion period should be reduced, and the student reinstated in school.

(4) The student assistance team's recommendation shall be presented to the superintendent, who shall make the final determination. The superintendent shall prepare a statement detailing reasons for or against school reinstatement and submit the statement to the county board. If the superintendent determines to reduce the expulsion period, he or she shall submit the statement required by §18A-5-1a(i) of this code and place the student in an appropriate school within the district.

(5) A student to be reinstated shall be permitted to return to school no later than the 10th regular school day following notice by the court to the superintendent regarding the student's successful completion or satisfactory progress toward successful completion of Juvenile Drug Court.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 1. COMMITMENT OF YOUTHFUL MALE OFFENDERS.

§28-1-2. Commitment; age limits; physical, educational and psychological examinations; admission; transfer and placement.

(a) Any male youth between the ages of 10 and 18 years may be committed to the custody of the Commissioner of Corrections by a circuit court of this state in the manner prescribed in ~~article five, chapter forty-nine~~ §49-4-701 through §49-4-725 of this code; and further, any male youth who has been adjudged delinquent pursuant to ~~subdivision (1), section four, article one, chapter forty-nine~~ §49-1-202 of this code, who, as a result thereof, was placed on probation and has been found, in a proceeding pursuant to the procedural requirements of ~~article five, chapter forty-nine~~ §49-4-701 through §49-4-725 of this code, to have violated a term of probation, prior to the attainment of his or her 20th birthday, which constitutes a criminal offense, may be committed to the custody of the Commissioner of Corrections as a youthful offender.

(b) Every youth committed ~~hereunder~~ under this article shall, following the dispositional proceeding, be transferred to the place or places designated by the Commissioner of Corrections for complete physical, educational, and psychological examinations, including all appropriate tests, to be completed as soon as possible, the completion of the physical examinations to be within 20 days. ~~Such~~ The youth shall be housed in a manner so as to prevent the spread of infectious disease. Following disposition and prior to transfer to the custody of the Commissioner of Corrections, each youth shall be allowed to visit with his or her relatives, without being committed to jail for a period of not less than one hour. The cost of the examinations ~~herein in this subsection~~ shall be borne by the committing county. The youth shall be provided all treatment and rehabilitation indicated by ~~such the~~ the examinations.

In lieu of the physical examinations and tests provided for ~~herein in this subsection~~, the court may, in the absence of objection, have the county health officer or other local health care facility perform physical and mental examinations and tests, so long as ~~such the~~ the examinations and tests

are performed prior to the dispositional proceeding. Except as otherwise provided by law, ~~no~~ a child shall not be committed to a jail following a dispositional proceeding solely to await a physical, educational, or mental examination or the results ~~thereof~~ of the exam.

(c) All ~~such~~ examinations shall be private. ~~No~~ A youth who is mentally ill or significantly intellectually disabled shall not be committed to, or retained by, the Commissioner of Corrections, but shall be returned to the committing court for further disposition. ~~No~~ A youth who has a serious infectious disease shall not be retained in the custody of the Commissioner of Corrections, but shall be transferred to an appropriate treatment facility. Detailed medical records shall be kept of every youth.

(d) The results of any ~~such~~ physical, educational, and psychological examinations, together with a copy of the petition, the adjudicatory order, and the dispositional order shall accompany every youth committed to the Commissioner of Corrections, without which ~~such~~ the youth shall not be accepted. The commissioner, or his or her designated representative, shall review the records of each youth committed to assure that ~~no~~ a youth is not illegally detained in an inappropriate facility or custodial situation.

(e) The Commissioner of Corrections ~~shall have the authority to~~ may transfer and place such youth in any of the established centers or homes or halfway programs ~~which shall be established,~~ and in less restrictive settings, whether under his or her jurisdiction or private nonprofit residential facilities, as he or she may ~~deem~~ determine appropriate to promote the rehabilitation of ~~such~~ the youth. To the extent possible, ~~no~~ a youth under the age of 15 shall not be in regular contact with youths between the ages of 16 and 18.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-16. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.

(a) The agency shall establish, and periodically review and update financial guidelines for determining eligibility for legal representation made available under the provisions of this article. The agency shall adopt a financial affidavit form for use by persons seeking legal representation made available under the provisions of this article.

(b) All persons seeking legal representation made available under the provisions of this article shall complete the agency's financial affidavit form, which shall be considered as an application for the provision of publicly funded legal representation.

(c) Any juvenile shall have the right to be effectively represented by counsel at all stages of proceedings brought under the provisions of ~~article five, chapter forty-nine~~ §49-4-701 through §49-4-725 of this code. If the child advises the court of his or her inability to pay for counsel, the court shall require the child's parent or custodian to execute a financial affidavit. If the financial affidavit demonstrates that neither of the child's parents, or, if applicable, the child's custodian, has sufficient assets to pay for counsel, the court shall appoint counsel for the child. If the financial affidavit demonstrates that either of the child's parents, or, if applicable, the child's custodian, does have sufficient assets to pay for counsel, the court shall order the parent, or, if applicable, the custodian, to provide, by paying for, legal representation for the child in the proceedings.

The court may disregard the assets of the child's parents or custodian and appoint counsel for the child, as provided ~~above~~ in this section, if the court concludes, as a matter of law, that the child and the parent or custodian have a conflict of interest that would adversely affect the child's right to effective representation of counsel, or concludes, as a matter of law, that requiring the child's parent or custodian to provide legal representation for the child would otherwise jeopardize the best interests of the child.

(d) In circuits in which no public defender office is in operation, circuit judges shall make all determinations of eligibility. In circuits in which a public defender office is in operation, all determinations of indigency shall be made by a public defender office employee designated by the executive director. ~~Such~~ The determinations shall be made after a careful review of the financial affidavit submitted by the person seeking representation. The review of the affidavit shall be conducted in accord with the financial eligibility guidelines established by the agency pursuant to subsection (a) of this section. In addition to the financial eligibility guidelines, the person determining eligibility shall consider other relevant factors, including, but not limited to, those set forth in subdivisions (1) through (9) of subsection (e) of this section. If there is substantial reason to doubt the accuracy of information in the financial affidavit, the person determining eligibility may make ~~such~~ any inquiries ~~as are~~ necessary to determine whether the affiant has truthfully and completely disclosed the required financial information.

After reviewing all pertinent matters, the person determining eligibility may find the affiant ~~to be~~ eligible to have the total cost of legal representation provided by the state, or may find that the total cost of providing representation shall be apportioned between the state and the eligible person. A person whose annual income exceeds the maximum annual income level allowed for eligibility may receive all or part of the necessary legal representation, or a person whose income falls below the maximum annual income level for eligibility may be denied all or part of the necessary legal representation if the person determining eligibility finds the person's particular circumstances require that eligibility be allowed or disallowed, as the case may be, on the basis of one or more of the nine factors set forth in subsection (e) of this section. If legal representation is made available to a person whose income exceeds the maximum annual income level for eligibility, or if legal representation is denied to a person whose income falls below the maximum annual income level for eligibility, the person determining eligibility shall make a written statement of the reasons for the action and shall specifically relate those reasons to one or more of the factors set forth in subsection (e) of this section.

(e) The following factors shall be considered in determining eligibility for legal representation made available under the provisions of this article:

- (1) Current income prospects, taking into account, seasonal variations in income;
- (2) Liquid assets, assets which may provide collateral to obtain funds to employ private counsel, and other assets which may be liquidated to provide funds to employ private counsel;
- (3) Fixed debts and obligations, including federal, state and local taxes, and medical expenses;
- (4) Child care, transportation, and other expenses necessary for employment;
- (5) Age or physical infirmity of resident family members;

(6) Whether the person seeking publicly funded legal representation has made reasonable and diligent efforts to obtain private legal representation, and the results of those efforts;

(7) The cost of obtaining private legal representation with respect to the particular matter in which assistance is sought;

(8) Whether the person seeking publicly funded legal representation has posted a cash bond for bail or has obtained release on bond for bail through the services of a professional bondsman for compensation and the amount and source of the money provided for ~~such~~ the bond;

(9) The consequences for the individual if legal assistance is denied.

(f) Legal representation requested by the affiant may not be denied in whole or part unless the affiant can obtain legal representation without undue financial hardship. ~~Persons~~ A person determined to be ineligible by public defender personnel may have the initial determination reviewed by a local circuit judge who may amend, modify or rewrite the initial determination. At any stage of the proceedings a circuit court may determine a prior finding of eligibility was incorrect or has become incorrect as the result of the affiant's changed financial circumstances, and may revoke any prior order providing legal representation. In ~~such that~~ event, any attorney previously appointed shall be entitled to compensation under the provisions of law applicable to ~~such the~~ the appointment for services already rendered.

(g) In the circumstances and manner set forth below, circuit judges may order repayment to the state, through the office of the clerk of the circuit court having jurisdiction over the proceedings, of the costs of representation provided under this article:

(1) In every case in which services are provided to an indigent person and an adverse judgment has been rendered against such person, the court may require that person, and in juvenile cases, may require the juvenile's parents or custodian, to pay as costs the compensation of appointed counsel, the expenses of the defense, and ~~such~~ any other fees and costs as authorized by statute.

(2) The court shall not order a person to pay costs unless the person is able to pay without undue hardship. In determining the amount and method of repayment of costs, the court shall take account of the financial resources of the person, the person's ability to pay, and the nature of the burden that payment of costs will impose. The fact that the court initially determines, at the time of a case's conclusion, that it is not proper to order the repayment of costs does not preclude the court from subsequently ordering repayment ~~should~~ if the person's financial circumstances change.

(3) When a person is ordered to repay costs, the court may order payment to be made ~~forthwith~~ immediately or within a specified period of time or in specified installments. If a person is sentenced to a term of imprisonment, an order for repayment of costs is not enforceable during the period of imprisonment unless the court expressly finds, at the time of sentencing, that the person has sufficient assets to pay the amounts ordered to be paid or finds there is a reasonable likelihood the person will acquire the necessary assets in the foreseeable future.

(4) A person who has been ordered to repay costs, and who is not in contumacious default in the payment thereof, may at any time petition the sentencing court for modification of the repayment order. If it appears to the satisfaction of the court that continued payment of the amount ordered will impose undue hardship on the person or the person's dependents, the court may modify the method or amount of payment.

(5) When a person ordered to pay costs is also placed on probation or imposition or execution of sentence is suspended, the court may make the repayment of costs a condition of probation or suspension of sentence.

(h) Circuit clerks shall keep a record of repaid counsel fees and defense expenses collected pursuant to this section and shall, quarterly, pay the moneys to the State Auditor who shall deposit the funds in the General Revenue Fund of the state.

(i) The making of an affidavit subject to inquiry under this section does not in any event give rise to criminal remedies against the affiant nor occasion any civil action against the affiant except for the recovery of costs as in any other case where costs may be recovered and the recovery of the value of services, if any, provided pursuant to this article. A person who has made an affidavit knowing the contents thereof of the affidavit to be false may be prosecuted for false swearing as provided by law.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-2. Definitions.

Unless the context indicates clearly otherwise, as used in this article:

(a) "Adjacent regional juvenile detention facility" means a facility constructed or maintained on property owned or controlled by the Regional Jail Authority and designed (1) for the short term preadjudicatory detention of juveniles, for the confinement of juveniles who are awaiting transportation to or placement at another juvenile detention facility or juvenile correctional facility, or who are awaiting trial as an adult pursuant to ~~section ten, article five, chapter forty-nine~~ §49-4-710 of this code; or (2) for the court-ordered, short term placement of juveniles in a facility that is characterized by programmatic intervention and by staff restrictions of the movements and activities of juveniles placed there, that limits the juveniles' access to the surrounding community and that is not characterized by construction fixtures designed to physically restrict the movements and activities of juveniles.

(b) "Authority" or "West Virginia Regional Jail Authority" means the West Virginia Regional Jail and Correctional Facility Authority created by this article.

(c) "Board" means the governing body of the authority.

(d) "Bonds" means bonds of the authority issued under this article.

(e) "Cost of construction or renovation of a local jail facility, regional jail facility or juvenile facility" means the cost of all lands, water areas, property rights, and easements, financing charges, interest prior to and during construction and for a period not exceeding six months following the completion of construction, equipment, engineering and legal services, plans, specifications, and surveys, estimates of costs and other expenses necessary or incidental to determining the feasibility or practicability of any project, together with any other expenses necessary or incidental to the financing and the construction or renovation of the facilities and the placing of the facilities in operation.

(f) "County" means any county of this state.

(g) "Federal agency" means the United States of America and any department, corporation, agency, or instrumentality created, designated, or established by the United States of America.

(h) "Fund" or "funds" means a Regional Jail and Correctional Facility Authority fund provided in §31-20-10 of this code, including those accounts that may be established by the authority for accurate accounting of the expenditure of public funds by that agency.

(i) "Government" means state and federal government, and any political subdivision, agency or instrumentality of the state or federal government, corporate or otherwise.

(j) "Inmate" means any adult person properly committed to a local or regional jail facility or a correctional facility.

(k) "Local jail facility" means any county facility for the confinement, custody, supervision, or control of adult persons convicted of misdemeanors, awaiting trial, or awaiting transportation to a state correctional facility.

(l) "Municipality" means any city, town, or village in this state.

(m) "Notes" means any notes as defined in §46-3-104 of this code issued under this article by the authority.

(n) "Correctional facility" means any correctional facility, penitentiary, or other correctional institution operated by the Division of Corrections for the incarceration of adults.

(o) "Regional jail facility" or "regional jail" means any facility operated by the authority and used jointly by two or more counties for the confinement, custody, supervision, or control of adult persons convicted of misdemeanors or awaiting trial or awaiting transportation to a state correctional facility.

(p) "Revenues" means all fees, charges, moneys, profits, payments of principal of, or interest on, loans and other investments, grants, contributions, and all other income received by the authority.

(q) "Security interest" means an interest in the loan portfolio of the authority which is secured by an underlying loan or loans and is evidenced by a note issued by the authority.

(r) "Work farm" has the same meaning as that term is used in §7-8-12 of this code authorizing work farms for individual counties.

(s) "Juvenile detention facility" or "juvenile detention center" means a facility operated by the Division of Juvenile Services (1) for the short term preadjudicatory detention of juveniles, for the confinement of juveniles who are awaiting transportation to or placement at another juvenile detention facility or juvenile correctional facility. or who are awaiting trial as an adult pursuant to ~~section ten, article five, chapter forty nine~~ §49-4-710 of this code; or (2) for the court-ordered, short term placement of juveniles in a facility that is characterized by programmatic intervention and by staff restrictions of the movements and activities of juveniles placed there, that limits the juveniles' access to the surrounding community and that is not characterized by construction fixtures designed to physically restrict the movements and activities of juveniles.

(t) "Juvenile correctional facility" means a facility operated by the Division of Juvenile Services (1) for the postdispositional confinement of juveniles adjudicated of offenses that would be

criminal offenses if committed by an adult; or (2) for the court-ordered placement of juveniles in a facility that is characterized by programmatic intervention and by staff restrictions of the movements and activities of juveniles placed there, that limits the juveniles' access to the surrounding community, and that is not characterized by construction fixtures designed to physically restrict the movements and activities of juveniles.

(u) "Juvenile facility" means an adjacent regional juvenile detention facility, a juvenile detention facility, a juvenile detention center, or a juvenile correctional facility.

CHAPTER 33. INSURANCE.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-20. Cancellation, nonrenewal or limitation of coverage of life or sickness and accident insurance.

(a) For purposes of this section, the following definitions shall apply:

(1) "Abuse," as used in this section, means the occurrence of one or more of the following acts between family or household members:

(A) Attempting to cause or intentionally, knowingly, or recklessly causing physical harm to another with or without dangerous or deadly weapons;

(B) Placing another in reasonable apprehension of physical harm;

(C) Creating fear of physical harm by harassment, psychological abuse, or threatening acts;

(D) Committing either sexual assault or sexual abuse as those terms are defined in §61-8B-1 *et seq.* and §61-8D-1 *et seq.* of this code;

(E) Holding, confining, detaining, or abducting another person against that person's will;

(F) Intentionally or recklessly damaging, destroying, or taking the tangible property of another individual;

(G) Insulting, taunting, or challenging another individual or engaging in a course of alarming or distressing conduct in a manner which is likely to provoke a violent or disorderly response or which is likely to cause humiliation, degradation, or fear in another individual;

(H) Trespassing on or in the property of another individual, or on or in property from which the trespasser has been excluded by court order;

(I) Child abuse or neglect, as defined in ~~section three, article one, chapter forty-nine~~ §49-1-201 of this code;

(J) Kidnapping, concealment, or removal of a minor child from his or her custodian or from a person entitled to visitation, as set forth in §61-2-14 through §61-2-14e of this code.

(2) "Family or household member" means current or former spouses, persons living as spouses, persons who formerly resided as spouses, parents, children and stepchildren, current or former sexual or intimate partners, other persons related by blood or marriage, persons who

are presently or in the past have resided or cohabited together, or a person with whom the victim has a child in common.

(3) "Victim of abuse," as used in this section, means an individual who has been or is subject to abuse, including, but not limited to, an individual who seeks, has sought, or should have sought medical or psychological treatment for abuse, protection from abuse or shelter from abuse.

(b) For all policies issued or renewed after the effective date of this section, ~~no~~ a person or entity engaged in the business of providing life or health insurance, or both, in this state may not:

(1) Deny, refuse to issue, refuse to renew, refuse to reissue, cancel, or otherwise terminate an insurance policy or restrict coverage on any individual because that individual is, has been, or may be the victim of abuse;

(2) Add any surcharge or rating factor to a premium of an insurance policy because an individual has been or may be the victim of abuse;

(3) Exclude or limit coverage for losses or deny a claim incurred because an individual has been or may be the victim of abuse; or

(4) Require as part of the application process any information regarding whether that individual has been or may be the victim of abuse.

(c) Nothing in this section may be construed to prohibit a person from declining to issue an insurance policy insuring the life of an individual who is or has been the victim of abuse if the perpetrator of abuse is the applicant or would be the owner of the insurance policy.

(d) Nothing in this section may be construed to prohibit a person from underwriting or rating a risk on the basis of a preexisting physical or mental condition, even if the condition had been caused by abuse: *Provided, That:*

(1) The person routinely underwrites or rates the condition in the same manner with respect to an insured or an applicant who is not a victim of abuse;

(2) The fact that an individual is, has been, or may be the victim of abuse may not be considered a physical or mental condition; and

(3) The underwriting or rating is not used to evade the intent of this law or any other provision of law. A person may not be held civilly or criminally liable for any cause of action which may be brought because of compliance with this section.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-MAKING RESPONSIBILITY OF CHILDREN.

§48-9-205. Permanent parenting plan.

(a) A party seeking a judicial allocation of custodial responsibility or decision-making responsibility under this article shall file a proposed parenting plan with the court. Parties may file a joint plan. A proposed plan shall be verified and shall state, to the extent known or reasonably discoverable by the filing party or parties:

(1) The name, address, and length of residence of any adults with whom the child has lived for one year or more, or in the case of a child less than one year old, any adults with whom the child has lived since the child's birth;

(2) The name and address of each of the child's parents and any other individuals with standing to participate in the action under §48-9-103 of this code;

(3) A description of the allocation of care taking and other parenting responsibilities performed by each person named in subdivisions (1) and (2) of this subsection during the twenty-four months preceding the filing of an action under this article;

(4) A description of the work and child-care schedules of any person seeking an allocation of custodial responsibility, and any expected changes to these schedules in the near future;

(5) A description of the child's school and extracurricular activities;

(6) A description of any of the limiting factors as described in §48-9-209 of this code that are present, including any restraining orders against either parent to prevent domestic or family violence, by case number and jurisdiction;

(7) Required financial information; and

(8) A description of the known areas of agreement and disagreement with any other parenting plan submitted in the case.

The court shall maintain the confidentiality of any information required to be filed under this section when the person giving that information has a reasonable fear of domestic abuse and disclosure of the information would increase that fear.

(b) The court shall develop a process to identify cases in which there is credible information that child abuse or neglect, as defined in ~~section three, article one, chapter forty-nine~~ §49-1-201 of this code, or domestic violence as defined in §48-27-202 of this code has occurred. The process shall include assistance for possible victims of domestic abuse in complying with subdivision (6), subsection (a) of this section, and referral to appropriate resources for safe shelter, counseling, safety planning, information regarding the potential impact of domestic abuse on children, and information regarding civil and criminal remedies for domestic abuse. The process shall also include a system for ensuring that jointly submitted parenting plans that are filed in cases in which there is credible information that child abuse or domestic abuse has occurred receive the court review that is mandated by §48-9-201(b) of this code.

(c) Upon motion of a party and after consideration of the evidence, the court shall order a parenting plan consistent with the provisions of §48-9-206, §48-9-207, §48-9-208 and §48-9-209 of this code, containing:

(1) A provision for the child's living arrangements and each parent's custodial responsibility, which shall include either:

(A) A custodial schedule that designates in which parent's home each minor child will reside on given days of the year; or

(B) A formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court;

(2) An allocation of decision-making responsibility as to significant matters reasonably likely to arise with respect to the child;

(3) A provision consistent with §48-9-202 of this code for resolution of disputes that arise under the plan, and remedies for violations of the plan; and

(4) A plan for the custody of the child should one or both of the parents as a member of the National Guard, a reserve component, or an active duty component be mobilized, deployed, or called to active duty.

(d) A parenting plan may, at the court's discretion, contain provisions that address matters that are expected to arise in the event of a party's relocation, or provide for future modifications in the parenting plan if specified contingencies occur.

PART III - FACT FINDING.

§48-9-301a. Child abuse allegations.

(a) If allegations of child abuse are made during a child custody proceeding and the court has concerns regarding the child's safety, the court may take any reasonable, temporary steps as the court, in its discretion, ~~deems~~ considers appropriate under the circumstances to protect the child's safety until an investigation can be completed. Nothing in this subsection shall affect the applicability of ~~sections two and nine of article six-a, chapter forty-nine~~ §49-2-802 and §49-2-803 of this code.

(b) If allegations of child abuse are made during a child custody proceeding, the court may request that the local child protective service conduct an investigation of the allegations pursuant to ~~article six-a, chapter forty-nine~~ §49-2-801 through §49-2-814 of this code. Upon completion of the investigation, the agency shall report its findings to the court.

ARTICLE 22. ADOPTION.

PART III. CONSENT OR RELINQUISHMENT; ABANDONMENT.

§48-22-301. Persons whose consent or relinquishment is required; exceptions.

(a) Subject to the limitations hereinafter set forth, consent to or relinquishment for adoption of a minor child is required of:

(1) The parents or surviving parent ~~whether adult or infant~~ of a marital child, whether adult or infant;

(2) The outsider father of a marital child who has been adjudicated to be the father of the child or who has filed a paternity action which is pending at the time of the filing of the petition for adoption;

(3) The birth mother ~~whether adult or infant~~ of a nonmarital child, whether adult or infant; and

(4) The determined father.

(b) Consent or relinquishment shall not be required of a parent or of any other person having custody of the adoptive child:

(1) Whose parental rights have been terminated pursuant to the provisions of ~~article three, chapter forty-nine~~ §49-4-114 of this code;

(2) Whom the court finds has abandoned the child as set forth in ~~22-306~~ §48-22-306 of this code; or

(3) Who, in a stepparent adoption, is the birth parent or adoptive parent of the child and is married to the petitioning adoptive parent. In such stepparent adoption, the parent must assent to the adoption by joining as a party to the petition for adoption.

(c) If the mother, legal father, or determined father is under disability, the court may order the adoption if it finds:

(1) The parental rights of the person are terminated, abandoned, or permanently relinquished;

(2) The person is incurably insane; or

(3) The disability arises solely because of age and an otherwise valid consent or relinquishment has been given.

(d) If all persons entitled to parental rights of the child sought to be adopted are deceased or have been deprived of the custody of the child by law, then consent or relinquishment is required of the legal guardian or of any other person having legal custody of the child at the time. If there is no legal guardian nor any person who has legal custody of the child, then consent or relinquishment is required from some discreet and suitable person appointed by the court to act as the next friend of the child in the adoption proceedings.

(e) If one of the persons entitled to parental rights of the child sought to be adopted is deceased, only the consent or relinquishment of the surviving person entitled to parental rights is required.

(f) If the child to be adopted is 12 years of age or over, the consent of the child is required to be given in the presence of a judge of a court of competent jurisdiction, unless for extraordinary cause, the requirement of such consent is waived by the court.

(g) Any consent to adoption or relinquishment of parental rights shall have the effect of authorizing the prospective adoptive parents or the agency to consent to medical treatment for the child, whether or not such authorization is expressly stated in the consent or relinquishment.

ARTICLE 26. DOMESTIC VIOLENCE ACT.

PART VII. CONFIDENTIALITY.

§48-26-701. Confidentiality.

(a) ~~No~~ A program licensed pursuant to this article may not disclose, reveal, or release or be compelled to disclose, reveal, or release, any written records or personal or personally identifying information about a program participant created or maintained in providing services, regardless

of whether the information has been encoded, encrypted, hashed, or otherwise protected, pursuant to this article except:

(1) Upon written consent, or upon oral consent in emergency situations defined by legislative rule, of the person seeking or who has sought services from the program;

(2) In any proceeding brought under §9-6-4 and §9-6-5 of this code or ~~article six, chapter forty-nine~~ §49-4-601 through §49-4-610 of this code;

(3) As mandated by ~~article six-a, chapter forty-nine~~ §49-2-801 through §49-2-814 and §9-6-1 *et seq.* of this code;

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

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

(6) As authorized by the releases signed by batterer intervention and prevention program participants pursuant to the provisions of subsection (b) of this section.

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

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

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

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

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

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

(c) Monitored parenting and exchange programs may disclose to one parent or guardian, without the permission of the other parent or guardian, any perceived threat of harm or violation

of the court order or violation of the monitored parenting and exchange program rules by the other parent or guardian.

(d) ~~No~~ A monitored parenting and exchange program may not release information about the child without consent of the parent with custodial responsibility or guardian.

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

(f) ~~No~~ A consent or authorization for the transmission or disclosure of confidential information is not effective unless it is signed by the program participant whose information is being disclosed. Every person signing an authorization shall be given a copy.

(g) A victim of domestic violence, dating violence, sexual assault, or stalking shall not be required to provide consent to release his or her personally identifying information as a condition of eligibility for the services, nor may any personally identifying information be shared in order to comply with federal or state reporting, evaluation, or data collection requirements: *Provided*, That nothing in this section prohibits a program from reporting suspected abuse or neglect, as defined by law, when the program is mandated by law to report suspected abuse or neglect.

§48-26-1002. Exclusions.

The provisions of this part do not apply to therapeutic or supervised visitation or exchanges or any activity conducted by the state or others in abuse and neglect proceedings pursuant to ~~articles six and six a, chapter forty nine~~ §49-2-801 through §49-2-814 and §49-4-601 through §49-4-610 of this code in which assessment, evaluation, formulation of a treatment plan, case management, counseling, therapy, or similar activities occur.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-403. Emergency protective orders of court; hearings; persons present.

(a) Upon the filing of a verified petition under this article, the magistrate court may enter an emergency protective order as it may ~~deem~~ determine necessary to protect the petitioner or minor children from domestic violence and, upon good cause shown, may do so ex parte without the necessity of bond being given by the petitioner. Clear and convincing evidence of immediate and present danger of abuse to the petitioner or minor children ~~shall constitute~~ constitutes good cause for the issuance of an emergency protective order pursuant to this section. If the respondent is not present at the proceeding, the petitioner or the petitioner's legal representative shall certify to the court, in writing, the efforts which have been made to give notice to the respondent or just cause why notice should not be required. Copies of medical reports or records may be admitted into evidence to the same extent as though the original ~~thereof~~ reports or records. The custodian of ~~such the~~ records ~~shall not be~~ is not required to be present to authenticate ~~such the~~ records for any proceeding held pursuant to this subsection. If the magistrate court determines to enter an emergency protective order, the order shall prohibit the respondent from possessing firearms.

(b) Following the proceeding, the magistrate court shall order a copy of the petition to be served immediately upon the respondent, together with a copy of any emergency protective order entered pursuant to the proceedings, a notice of the final hearing before the family court, and a statement of the right of the respondent to appear and participate in the final hearing, as provided in subsection (d) of this section. Copies of any order entered under the provisions of this section,

a notice of the final hearing before the family court, and a statement of the right of the petitioner to appear and participate in the final hearing, as provided in subsection (d) of this section, shall also be delivered to the petitioner. Copies of any order entered shall also be delivered to any law-enforcement agency having jurisdiction to enforce the order, including municipal police, the county sheriff's office and local office of the State Police, within 24 hours of the entry of the order. An emergency protective order is effective until modified by order of the family court upon hearing as provided in subsection (d) of this section. The order is in full force and effect in every county in this state.

(c) Subsequent to the entry of the emergency protective order, service on the respondent, and the delivery to the petitioner and law-enforcement officers, the court file shall be transferred to the office of the clerk of the circuit court for use by the family court.

(d) The family court shall schedule a final hearing on each petition in which an emergency protective order has been entered by a magistrate. The hearing shall be scheduled not later than 10 days following the entry of the order by the magistrate. The notice of the final hearing shall be served on the respondent and delivered to the petitioner, as provided in subsection (b) of this section, and must set forth the hearing date, time, and place and include a statement of the right of the parties to appear and participate in the final hearing. The notice must also provide that the petitioner's failure to appear will result in a dismissal of the petition and that the respondent's failure to appear may result in the entry of a protective order against him or her for a period of 90 or 180 days, as determined by the court. The notice must also include the name, mailing address, physical location, and telephone number of the family court having jurisdiction over the proceedings. To facilitate the preparation of the notice of final hearing required by the provisions of this subsection, the family court must provide the magistrate court with a day and time in which final hearings may be scheduled before the family court within the time required by law.

(e) Upon final hearing the petitioner must prove, by a preponderance of the evidence, the allegation of domestic violence or that he or she reported or witnessed domestic violence against another and has, as a result, been abused, threatened, harassed, or has been the subject of other actions to attempt to intimidate him or her, or ~~such the~~ petition shall be dismissed by the family court. If the respondent has not been served with notice of the emergency protective order, the hearing may be continued to permit service to be effected. The failure to obtain service upon the respondent does not constitute a basis to dismiss the petition. Copies of medical reports may be admitted into evidence to the same extent as though the original thereof, upon proper authentication, by the custodian of ~~such the~~ records.

(f) ~~No~~ A person requested by a party to be present during a hearing held under the provisions of this article shall not be precluded from being present unless ~~such that~~ such person is to be a witness in the proceeding and a motion for sequestration has been made and ~~such the~~ motion has been granted. A person found by the court to be disruptive may be precluded from being present.

(g) Upon hearing, the family court may dismiss the petition or enter a protective order for a period of 90 days or, in the discretion of the court, for a period of 180 days. The hearing may be continued on motion of the respondent, at the convenience of the court. Otherwise, the hearing may be continued by the court no more than seven days. If a hearing is continued, the family court may modify the emergency protective order as it ~~deems~~ considers necessary.

(h) Notwithstanding any other provision of this code to the contrary, a petition filed pursuant to this section that results in the issuance of an emergency protective order naming a juvenile as the respondent in which the petition for the emergency protective order is filed by or on behalf of

the juvenile's parent, guardian or custodian, or other person with whom the juvenile resides shall be treated as a petition authorized by ~~section seven, article five, chapter forty-nine~~ §49-4-704 of this code, alleging the juvenile is a juvenile delinquent: *Provided*, That the magistrate court shall notify the prosecuting attorney in the county where the emergency protective order is issued within 24 hours of the issuance of the emergency protective order and the prosecuting attorney may file an amended verified petition to comply with the provisions of ~~subsection (a) of section seven, article five, chapter forty-nine~~ §49-4-704(a) of this code within two judicial days.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

PART II. DEFINITIONS.

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

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

"Abandonment" means any conduct that demonstrates the settled purpose to forego the duties and parental responsibilities to the child;

"Abused child" means:

(1) A child whose health or welfare is being harmed or threatened by:

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

(B) Sexual abuse or sexual exploitation;

(C) The sale or attempted sale of a child by a parent, guardian, or custodian in violation of §61-2-14h of this code;

(D) Domestic violence as defined in §48-27-202 of this code; or

(E) Human trafficking or attempted human trafficking, in violation of §61-14-2 of this code.

(2) A child conceived as a result of sexual assault, as that term is defined in this section, or as a result of the violation of a criminal law of another jurisdiction which has the same essential elements: *Provided*, That no victim of sexual assault may be determined to be an abusive parent, as that term is defined in this section, based upon being a victim of sexual assault.

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

“Battered parent” for the purposes of §49-4-601 et seq. of this code means a respondent parent, guardian, or other custodian who has been adjudicated by the court to have not condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by §48-27-202 of this code, which was perpetrated by the same person or persons determined to have abused or neglected the child or children.

“Child abuse and neglect” or “child abuse or neglect” means any act or omission that creates an abused child or a neglected child as those terms are defined in this section.

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

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

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

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

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

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

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

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

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

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

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

(C) Nutritional deprivation;

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

(E) Inadequate treatment of serious illness or disease;

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

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

(H) The parent, guardian, or custodian's abuse of alcohol or drugs or other controlled substance as defined in §60A-1-101 of this code, has impaired his or her parenting skills to a degree as to pose an imminent risk to a child's health or safety; or

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

"Neglected child" means a child:

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

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

(C) "Neglected child" does not mean a child whose education is conducted within the provisions of §18-8-1 *et seq.* of this code.

"Petitioner or copetitioner" means the department or any reputable person who files a child abuse or neglect petition pursuant to §49-4-601 *et seq.* of this code.

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

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

"Sexual abuse" means:

(A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by §61-8c-3 of this code, which a parent, guardian, or custodian engages in, attempts to engage in, or knowingly procures another person to engage in, with a child notwithstanding the fact that for a child who is less than 16 years of age, the child may have willingly participated in that conduct or the child may have suffered no apparent physical, mental or emotional injury as a result of that conduct or, for a child 16 years of age or older, the child may have consented to that conduct or the child may have suffered no apparent physical injury or mental or emotional injury as a result of that conduct;

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

(C) Any of the offenses proscribed in §61-8b-7, §61-8b-8, or §61-8b-9 of this code.

“Sexual assault” means any of the offenses proscribed in §61-8b-3, §61-8b-4, or §61-8b-5 of this code.

“Sexual contact” means sexual contact as that term is defined in §61-8b-1 of this code.

“Sexual exploitation” means an act where:

(A) A parent, custodian, or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in §61-8c-1 of this code;

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

(C) A parent, guardian, or custodian knowingly maintains or makes available a child for the purpose of engaging the child in commercial sexual activity in violation of §61-14-5 of this code.

“Sexual intercourse” means sexual intercourse as that term is defined in §61-8b-1 of this code.

“Sexual intrusion” means sexual intrusion as that term is defined in §61-8b-1 of this code.

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

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-2. Family court jurisdiction; exceptions; limitations.

(a) The family court shall exercise jurisdiction over the following matters:

(1) All actions for divorce, annulment or separate maintenance brought under the provisions of §48-3-1 *et seq.*, §48-4-1 *et seq.*, or §48-5-1 *et seq.* of this code, except as provided in subsections (b) and (c) of this section;

(2) All actions to obtain orders of child support brought under the provisions of §48-11-1 *et seq.*, §48-12-1 *et seq.*, and §48-14-1 *et seq.* of this code;

(3) All actions to establish paternity brought under the provisions of §48-24-1 *et seq.* of this code and any dependent claims related to such actions regarding child support, parenting plans or other allocation of custodial responsibility or decision-making responsibility for a child;

(4) All actions for grandparent visitation brought under the provisions of §48-10-1 *et seq.* of this code;

(5) All actions for the interstate enforcement of family support brought under §48-16-1 *et seq.* of this code and for the interstate enforcement of child custody brought under the provisions of §48-20-1 *et seq.* of this code;

(6) All actions for the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child, including actions brought under the Uniform Child Custody Jurisdiction and Enforcement Act, as provided in §48-20-1 *et seq.* of this code;

(7) All petitions for writs of habeas corpus ~~wherein~~ in which the issue contested is custodial responsibility for a child;

(8) All motions for temporary relief affecting parenting plans or other allocation of custodial responsibility or decision-making responsibility for a child, child support, spousal support or domestic violence;

(9) All motions for modification of an order providing for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child or for child support or spousal support;

(10) All actions brought, including civil contempt proceedings, to enforce an order of spousal or child support or to enforce an order for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child;

(11) All actions brought by an obligor to contest the enforcement of an order of support through the withholding from income of amounts payable as support or to contest an affidavit of accrued support, filed with the circuit clerk, which seeks to collect an arrearage;

(12) All final hearings in domestic violence proceedings;

(13) Petitions for a change of name, exercising concurrent jurisdiction with the circuit court;

(14) All proceedings for payment of attorney fees if the family court judge has jurisdiction of the underlying action;

(15) All proceedings for property distribution brought under §48-7-1 *et seq.* of this code;

(16) All proceedings to obtain spousal support brought under §48-8-1 *et seq.* of this code;

(17) All proceedings relating to the appointment of guardians or curators of minor children brought pursuant to §44-10-3, §44-10-4 and §44-10-6 of this code, exercising concurrent jurisdiction with the circuit court; and

(18) All proceedings relating to petitions for sibling visitation.

(b) If an action for divorce, annulment, or separate maintenance does not require the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child and does not require an award or any payment of child support, the circuit court has concurrent jurisdiction with the family court over the action if, at the time of the filing of the action, the parties also file a written property settlement agreement executed by both parties.

(c) If an action for divorce, annulment, or separate maintenance is pending and a petition is filed pursuant to the provisions of ~~article six, chapter forty-nine~~ §49-4-601 through §49-4-610 of this code alleging abuse or neglect of a child by either of the parties to the divorce, annulment, or separate maintenance action, the orders of the circuit court in which the abuse or neglect petition is filed shall supersede and take precedence over an order of the family court respecting the allocation of custodial and decision-making responsibility for the child between the parents. If no order for the allocation of custodial and decision-making responsibility for the child between the parents has been entered by the family court in the pending action for divorce, annulment, or separate maintenance, the family court shall stay any further proceedings concerning the allocation of custodial and decision-making responsibility for the child between the parents and defer to the orders of the circuit court in the abuse or neglect proceedings.

(d) If a family court judge is assigned as a judicial officer of a domestic violence court then jurisdiction of all proceedings relating to criminal misdemeanor crimes of domestic violence as referenced in §48-27-301 of this code involving a family or household member as referenced in §48-27-204(1) through §48-27-204(6) and §48-27-204(7)(A), §48-27-204(7)(B), and §48-27-204(7)(H) of this code shall be concurrent with the circuit and magistrate courts.

(e) A family court is a court of limited jurisdiction. A family court is a court of record only for the purpose of exercising jurisdiction in the matters for which the jurisdiction of the family court is specifically authorized in this section and in chapter 48 of this code. A family court may not exercise the powers given courts of record in §51-5-1 of this code or exercise any other powers provided for courts of record in this code unless specifically authorized by the Legislature. A family court judge is not a "judge of any court of record" or a "judge of a court of record" as the terms are defined and used in §51-9-1 *et seq.* of this code.

ARTICLE 7. OFFICIAL REPORTERS.

§51-7-8. Transcripts to be furnished indigent persons in juvenile delinquency and child abuse and neglect proceedings upon timely request; payment therefor.

In any proceeding held pursuant to ~~article five or six, chapter forty-nine~~ §49-4-601 through §49-4-725 of this code in which an indigent respondent or his or her counsel has filed a written request, in the manner prescribed by the Supreme Court of Appeals, evidencing an intent to appeal a decision of a circuit court in the proceeding, the court, upon presentation of a written request, presented within 30 days after the entry of the order sought to be appealed, shall authorize and direct the court reporter to furnish a transcript of the testimony of the proceeding or the part or parts ~~thereof~~ of the transcript that have specifically been requested.

The court, after being sufficiently satisfied of the reasonableness of a voucher or claim submitted for payment of the cost of preparing the transcript, shall certify the cost to the State Auditor, who shall, in a timely manner, pay the court reporter's fee from appropriations to the Supreme Court of Appeals.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14h. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

(a) Any person or agency who knowingly offers, gives, or agrees to give to another person money, property, service, or other thing of value in consideration for the recipient's locating,

providing, or procuring a minor child for any purpose which entails a transfer of the legal or physical custody of ~~said the~~ child, including, but not limited to, adoption or placement, is guilty of a felony and subject to fine and imprisonment as provided ~~herein~~ in this section.

(b) Any person who knowingly receives, accepts, or offers to accept money, property, service, or other thing of value to locate, provide or procure a minor child for any purpose which entails a transfer of the legal or physical custody of ~~said the~~ child, including, but not limited to, adoption or placement, is guilty of a felony and subject to fine and imprisonment as provided ~~herein~~ in this section.

(c) Any person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, may be confined in the state correctional facility for not less than one year nor more than 10 years or, in the discretion of the court, be confined in jail not more than one year and fined not less than \$2,000 nor more than \$10,000.

(d) A child whose parent, guardian, or custodian has sold or attempted to sell said child in violation of the provisions of §48-22-1 *et seq.* of this code may be deemed an abused child as defined by ~~section three, article one, chapter forty-nine~~ §49-1-201 of this code. The court may place such a child in the custody of the Department of Health and Human Resources or with ~~such other~~ another responsible person as dictated by the best interests of the child ~~dietate~~.

(e) This section does not prohibit the payment or receipt of the following:

(1) Fees paid for reasonable and customary services provided by the Department of Health and Human Resources or any licensed or duly authorized adoption or child-placing agency;

(2) Reasonable and customary legal, medical, hospital or other expenses incurred in connection with the pregnancy, birth, and adoption proceedings;

(3) Fees and expenses included in any agreement in which a woman agrees to become a surrogate mother; or

(4) Any fees or charges authorized by law or approved by a court in a proceeding relating to the placement plan, prospective placement, or placement of a minor child for adoption.

(f) At the final hearing on the adoption as provided in §48-22-1 *et seq.* of this code, an affidavit of any fees and expenses paid or promised by the adoptive parents shall be submitted to the court.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-12b. Escape from custody of the Director of Juvenile Services.

(a) Any person, under the age of 18 years of age, who escapes or attempts to escape from the custody of the Director of Juvenile Services, regardless of where ~~such that~~ that person is confined or where ~~such the~~ the escape occurs, is guilty of a delinquent act and subject to the jurisdiction of the circuit court of the county in which the escape occurred, pursuant to ~~section two, article five, chapter forty-nine~~ §49-4-701 of this code: *Provided*, That upon agreement of all parties, the prosecution of the escape may be transferred to the circuit court from which the juvenile was originally committed.

(b) Any person, over the age of 18 years of age or any juvenile who has been transferred to the adult jurisdiction of the committing court, who escapes or attempts to escape from the custody

of the Director of Juvenile Services, regardless of where ~~such that~~ person is confined or where ~~such the~~ escape or attempted escape occurs, is guilty of escape and, if the person is detained or confined for an offense which is a felony or would have been a felony if committed by an adult is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not more than five years. Any person, over the age of 18 years of age or any juvenile who has been transferred to the adult jurisdiction of the committing court, who is detained for an offense which is a misdemeanor or would have been a misdemeanor if committed by an adult is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a regional jail for not more than one year.

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-25. Falsely reporting child abuse.

(a) Any person who knowingly and intentionally reports or causes to be reported to a law-enforcement officer, child protective service worker, or judicial officer that another has committed child sexual abuse, child abuse, or neglect as ~~such those terms~~ are defined in ~~section three, article one, chapter forty-nine §49-1-201~~ of this code who when doing so knows or has reason to know ~~such the~~ accusation is false and who does it with the intent to influence a child custody decision shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than \$1,000, sentenced to not more than sixty hours of court-approved community service, or both.

(b) In addition to any other sanctions imposed by the provisions of this section, any person convicted of a violation of this section shall be required to attend and complete a court-approved parenting class.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-8. Possession of deadly weapons by minors; prohibitions.

Notwithstanding any other provision of this article to the contrary, a person under the age of 18 years who is not married or otherwise emancipated shall not possess or carry concealed or openly any deadly weapon: *Provided*, That a minor may possess a firearm upon premises owned by ~~said the~~ minor or his or her family, or on the premises of another with the permission of his or her parent or guardian and in the case of property other than his or her own or that of his or her family, with the permission of the owner or lessee of ~~such the~~ property: *Provided, however*, That nothing in this section shall prohibit a minor from possessing a firearm while hunting in a lawful manner or while traveling from a place where he or she may lawfully possess a deadly weapon, to a hunting site, and returning to a place where he or she may lawfully possess ~~such the~~ weapon.

A violation of this section by a person under the age of 18 years shall subject the child to the jurisdiction of the circuit court under the provisions of ~~article five, chapter forty-nine §49-4-701 through §49-4-725~~ of this code, and ~~such the~~ minor may be proceeded against in the same manner as if he or she had committed an act which if committed by an adult would be a crime, and may be adjudicated delinquent.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-12. Incest; penalty.

(a) For the purposes of this section:

(1) "Aunt" means the sister of a person's mother or father;

(2) "Brother" means the son of a person's mother or father;

(3) "Daughter" means a person's natural daughter, adoptive daughter, or the daughter of a person's husband or wife;

(4) "Father" means a person's natural father, adoptive father, or the husband of a person's mother;

(5) "Granddaughter" means the daughter of a person's son or daughter;

(6) "Grandfather" means the father of a person's father or mother;

(7) "Grandmother" means the mother of a person's father or mother;

(8) "Grandson" means the son of a person's son or daughter;

(9) "Mother" means a person's natural mother, adoptive mother, or the wife of a person's father;

(10) "Niece" means the daughter of a person's brother or sister;

(11) "Nephew" means the son of a person's brother or sister;

(12) "Sexual intercourse" means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person;

(13) "Sexual intrusion" means any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party;

(14) "Sister" means the daughter of a person's father or mother;

(15) "Son" means a person's natural son, adoptive son, or the son of a person's husband or wife; and

(16) "Uncle" means the brother of a person's father or mother.

(b) A person is guilty of incest when such person engages in sexual intercourse or sexual intrusion with his or her father, mother, brother, sister, daughter, son, grandfather, grandmother, grandson, granddaughter, nephew, niece, uncle, or aunt.

(c) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than 5 years nor more than 15 years, or fined not less than \$500 nor more than \$5,000 and imprisoned in the penitentiary not less than five years nor more than fifteen years.

(d) In addition to any penalty provided under this section and any restitution which may be ordered by the court under §61-11A-1 *et seq.* of this code, the court may order any person convicted under the provisions of this section, where the victim is a minor, to pay all or any portion of the cost of medical, psychological, or psychiatric treatment of the victim, the need for which

results from the act or acts for which the person is convicted, whether or not the victim is considered to have sustained bodily injury.

(e) In any case where a person is convicted of an offense described ~~herein~~ in this section against a child and further has or may have custodial, visitation, or other parental rights to the child, the court shall find that the person is an abusing parent within the meaning of ~~article six, chapter forty-nine~~ §49-4-601 through §49-4-610 of this code, and shall take ~~such~~ further action in accord with the provisions of ~~said article~~ those sections.

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-11a. Convictions for offenses against children.

In any case where a person is convicted of an offense described in this article against a child and the person has custodial, visitation, or other parental rights to the child who is the victim of the offense or any child who resides in the same household as the victim, the court shall, at the time of sentencing, find that the person is an abusing parent within the meaning of ~~article six, chapter forty-nine~~ §49-4-601 through §49-4-610 of this code as to the child victim, and may find that the person is an abusing parent as to any child who resides in the same household as the victim, and shall take ~~such~~ further action in accord with the provisions of ~~said article~~ those sections.

ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.

§61-8C-3b. Prohibiting juveniles from manufacturing, possessing and distributing nude or partially nude images of minors; creating exemptions; declaring a violation to be an act of juvenile delinquency; and providing for the punishment thereof.

(a) Any minor who intentionally possesses, creates, produces, distributes, presents, transmits, posts, exchanges, or otherwise disseminates a visual portrayal of another minor posing in an inappropriate sexual manner or who distributes, presents, transmits, posts, exchanges, or otherwise disseminates a visual portrayal of himself or herself posing in an inappropriate sexual manner ~~shall be~~ is guilty of an act of delinquency and, upon adjudication, disposition may be made by the circuit court pursuant to the provisions of ~~article five, chapter forty-nine~~ §49-4-701 through §49-4-725 of this code.

(b) As used in this section:

(1) "Posing in an inappropriate sexual manner" means exhibition of a bare female breast, female or male genitalia, pubic, or rectal areas of a minor for purposes of sexual titillation.

(2) "Visual portrayal" means:

(A) A photograph;

(B) A motion picture;

(C) A digital image;

(D) A digital video recording; or

(E) Any other mechanical or electronic recording process or device that can preserve, for later viewing, a visual image of a person that includes, but is not limited to, computers, cellphones, personal digital assistance, and other digital storage or transmitting devices;

(c) It shall be an affirmative defense to an alleged violation of this section that a minor charged with possession of the prohibited visual depiction did neither solicit its receipt nor distribute, transmit, or present it to another person by any means.

(d) Notwithstanding the provisions of §15-12-1 *et seq.* of this code, an adjudication of delinquency under the provisions of this section shall not subject the minor to the requirements of ~~said that~~ that article and chapter.

ARTICLE 8D. CHILD ABUSE.

§61-8D-9. Convictions for offenses against children.

In any case where a person is convicted of a felony offense against a child as set forth in this article and the person has custodial, visitation or other parental rights to the child who is the victim of the offense or any child who resides in the same household as the victim, the court shall, at the time of sentencing, find that the person is an abusing parent within the meaning of ~~article six, chapter forty-nine~~ §49-4-601 through §49-4-610 of this code as to the child victim, and may find that the person is an abusing parent as to any child who resides in the same household as the victim, and shall take such further action in accord with the provisions of ~~said article~~ those sections.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-23. Punishment for juvenile convicted as an adult; eligibility for parole; factors to be considered prior to sentencing.

(a) Notwithstanding any other provision of law to the contrary, a sentence of life imprisonment without the possibility of parole may not be imposed on a person who:

- (1) Is convicted of an offense punishable by life imprisonment; and
- (2) Was less than 18 years of age at the time the offense was committed.

(b) Unless otherwise provided by this code, the provisions of §62-12-1 *et seq.* of this code ~~shall govern~~ governs the eligibility for parole of a person who is convicted of an offense and sentenced to confinement if he or she was less than 18 years of age at the time the offense was committed, except that a person who is convicted of one or more offenses for which the sentence or any combination of sentences imposed is for a period that renders the person ineligible for parole until he or she has served more than 15 years shall be eligible for parole after he or she has served 15 years if the person was less than 18 years of age at the time each offense was committed.

(c) In addition to other factors required by law to be considered prior to the imposition of a sentence, in determining the appropriate sentence to be imposed on a person who has been transferred to the criminal jurisdiction of the court pursuant to ~~section ten, article five, chapter forty-nine~~ §49-4-710 of this code and who has been subsequently tried and convicted of a felony offense as an adult, the court shall consider the following mitigating circumstances:

- (1) Age at the time of the offense;
- (2) Impetuosity;
- (3) Family and community environment;
- (4) Ability to appreciate the risks and consequences of the conduct;
- (5) Intellectual capacity;

(6) The outcomes of a comprehensive mental health evaluation conducted by ~~an~~ a mental health professional licensed to treat adolescents in the State of West Virginia: *Provided*, That no provision of this section may be construed to require that a comprehensive mental health evaluation be conducted;

- (7) Peer or familial pressure;
- (8) Level of participation in the offense;
- (9) Ability to participate meaningfully in his or her defense;
- (10) Capacity for rehabilitation;
- (11) School records and special education evaluations;
- (12) Trauma history;
- (13) Faith and community involvement;
- (14) Involvement in the child welfare system; and
- (15) Any other mitigating factor or circumstances.

(d)(1) Prior to the imposition of a sentence on a person who has been transferred to the criminal jurisdiction of the court pursuant to ~~section ten, article five, chapter forty-nine~~ §49-4-710 of this code, and who has been subsequently tried and convicted of ~~an~~ a felony offense as an adult, the court shall consider the outcomes of any comprehensive mental health evaluation conducted by an mental health professional licensed to treat adolescents in the State of West Virginia. The comprehensive mental health evaluation must include the following:

- (A) Family interviews;
- (B) Prenatal history;
- (C) Developmental history;
- (D) Medical history;
- (E) History of treatment for substance use;
- (F) Social history; and

(G) A psychological evaluation.

(2) The provisions of this subsection are only applicable to sentencing proceedings for convictions rendered after the effective date of this section and shall do not constitute sufficient grounds for the reconsideration of sentences imposed as the result of convictions rendered after the effective date of this section.

ARTICLE 12. POSTMORTEM EXAMINATIONS.

§61-12-10. When autopsies made and by whom performed; records of date investigated; copies of records and information; reporting requirements.

(a) If in the opinion of the chief medical examiner, or of the county medical examiner of the county in which the death in question occurred, it is advisable and in the public interest that an autopsy be made, or if an autopsy is requested by either the prosecuting attorney or the judge of the circuit court or other court of record having criminal jurisdiction in that county, an autopsy shall be conducted by the chief medical examiner or his or her designee, by a member of his or her staff, or by a competent pathologist designated and employed by the chief medical examiner under the provisions of this article. For this purpose, the chief medical examiner may employ any county medical examiner who is a pathologist who holds board certification or board eligibility in forensic pathology or has completed an American Board of Pathology fellowship in forensic pathology to make the autopsies, and the fees to be paid for autopsies under this section shall be in addition to the fee provided for investigations pursuant to §61-12-8 of this code. A full record and report of the findings developed by the autopsy shall be filed with the office of the chief medical examiner by the person making the autopsy.

(b) Within the discretion of the chief medical examiner, or of the person making the autopsy, or if requested by the prosecuting attorney of the county, or of the county where any injury contributing to or causing the death was sustained, a copy of the report of the autopsy shall be furnished to the prosecuting attorney.

(c) The office of the chief medical examiner shall keep full, complete and properly indexed records of all deaths investigated, containing all relevant information concerning the death and the autopsy report if an autopsy report is made. Any prosecuting attorney or law-enforcement officer may secure copies of these records or information necessary for the performance of his or her official duties.

(d) Copies of these records or information shall be furnished, upon request, to any court of law, or to the parties therein to whom the cause of death is a material issue, except where the court determines that interests in a civil matter conflict with the interests in a criminal proceeding, in which case the interests in the criminal proceeding shall take precedence. The office of chief medical examiner shall be reimbursed a reasonable rate by the requesting party for costs incurred in the production of records under this subsection and subsection (c) of this section.

(e) The chief medical examiner is authorized to release investigation records and autopsy reports to the multidisciplinary team authorized by ~~section three, article five-d, chapter forty-nine~~ §49-4-402 of this code and as authorized in subsection (h) of this section. At the direction of the Secretary of the Department of Health and Human Resources the chief medical examiner may release records and information to other state agencies when considered to be in the public interest.

(f) Any person performing an autopsy under this section ~~is empowered to~~ may keep and retain, for and on behalf of the chief medical examiner, any tissue from the body upon which the autopsy was performed which may be necessary for further study or consideration.

(g) In cases of the death of any infant in the State of West Virginia where sudden infant death syndrome is the suspected cause of death and the chief medical examiner or the medical examiner of the county in which the death in question occurred considers it advisable to perform an autopsy, ~~it is the duty of~~ the chief medical examiner or the medical examiner of the county in which the death occurred ~~to~~ shall notify the sudden infant death syndrome program within the division of maternal and child health and to inform the program of all information to be given to the infant's parents.

(h) If the chief medical officer determines that a drug overdose is the cause of death of a person, the chief medical examiner shall provide notice of the death to the West Virginia Controlled Substances Monitoring Program Database Review Committee established pursuant to §60A-9-5(b) of this code and shall include in the notice any information relating to the cause of the fatal overdose.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 6B. PROTECTION AND PRESERVATION OF STATEMENTS AND TESTIMONY OF CHILD WITNESS.

§62-6B-5. Memorialization of statements of certain child witnesses; admissibility; hearing.

(a) After the effective date of this section, whenever any law-enforcement officer, physician, psychologist, social worker, or investigator, in the course of his or her employment or profession or while engaged in an active criminal investigation as a law-enforcement officer or an agent of a prosecuting attorney, obtains a statement from a child 13 years of age or younger who is an alleged victim in an investigation or prosecution alleging a violation of the provisions of §61-8B-3, §61-8B-4, §61-8B-5, or §61-8B-7 of this code, he or she shall ~~forthwith~~ immediately make a contemporaneous written notation and recitation of the statement received or obtained. An audio recording or video recording with sound capability of the statement may be used in lieu of the written recitation required by the provisions of this section. Failure to comply with the provisions of this section creates a presumption that the statement is inadmissible. The statement may be admitted if, after a hearing on the matter, the court finds by clear and convincing evidence that the failure to comply with the provisions of this section was a good faith omission and that the content of the proffered statement is an accurate recital of the information provided by the child and is otherwise admissible.

(b) The provisions of this section shall not apply to:

~~(1) Persons engaged in investigation pursuant to the provisions of article six or seven, chapter forty-nine of this code~~

~~(2)~~ (1) Medical personnel and other persons performing a forensic medical examination of a child who is an alleged victim; and

~~(3)~~ (2) Prosecuting attorneys when counseling with a child in preparation for eliciting the child's testimony in court.

The bill (Eng. Com. Sub. for H. B. 4020), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

Com. Sub. for Senate Bill 102, Creating WV Uniform Fiduciary Access to Digital Assets Act.

Com. Sub. for Senate Bill 181, Authorizing MAPS promulgate legislative rules.

Senate Bill 425, Removing sunset dates which members of policemen's or firemen's pension fund elect to participate in deferred retirement option plan.

Senate Bill 462, Establishing contribution holiday for public pension plans funded at 130 percent or more.

Senate Bill 463, Establishing group to examine benefits and need of transferring milk rules and regulations from DHHR to Agriculture.

And,

Eng. Com. Sub. for House Bill 4013, Clarifying venue in West Virginia state courts as it applies to nonresidents of the state.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Ojeda, Beach, Stollings, Drennan, Blair, Smith, and Swope.

Thereafter, at the request of Senator Beach, and by unanimous consent, the remarks by Senator Ojeda were ordered printed in the Appendix to the Journal.

At the request of Senator Prezioso, unanimous consent being granted, the remarks by Senators Beach and Stollings were ordered printed in the Appendix to the Journal.

At the request of Senator Weld, and by unanimous consent, the remarks by Senator Drennan were ordered printed in the Appendix to the Journal.

At the request of Senator Ferns, unanimous consent being granted, the remarks by Senators Blair and Smith were ordered printed in the Appendix to the Journal.

At the request of Senator Ferns, and by unanimous consent, a leave of absence for the day was granted Senator Mann.

Pending announcement of meetings of standing committees of the Senate, including a majority party caucus,

On motion of Senator Ferns, the Senate adjourned until, Monday, February 5, 2018, at 11 a.m.

SENATE CALENDAR

Monday, February 05, 2018
11:00 AM

THIRD READING

- Eng. Com. Sub. for S. B. 244 - Specifying conditions for unlawful possession of firearm at school-sponsored activities (original similar to HB4139)
- Eng. S. B. 322 - Relating to employees of Department of Agriculture
- Eng. S. B. 343 - Limiting expenses in preparing list for notice to redeem
- Eng. S. B. 364 - Allowing parent or legal guardian of homeschooled child provide signed statement for obtaining permit or license to operate motor vehicle
- Eng. S. B. 393 - Relating to compensation and composition of WV Racing Commission
- Eng. S. B. 400 - Prohibiting state licensing boards from hiring lobbyists - (Com. title amend. pending)
- Eng. S. B. 430 - Encouraging collaborative agreements between community and technical colleges and federally registered apprenticeship programs
- Eng. Com. Sub. for H. B. 4020 - Making technical corrections in the code when referencing chapter 49 - (Com. title amend. pending)

SECOND READING

- Com. Sub. for S. B. 102 - Creating WV Uniform Fiduciary Access to Digital Assets Act (original similar to HB4209)
- Com. Sub. for S. B. 181 - Authorizing MAPS promulgate legislative rules (original similar to HB4097)
- S. B. 425 - Removing sunset dates which members of policemen's or firemen's pension fund elect to participate in deferred retirement option plan
- S. B. 462 - Establishing contribution holiday for public pension plans funded at 130 percent or more
- S. B. 463 - Establishing group to examine benefits and need of transferring milk rules and regulations from DHHR to Agriculture
- Eng. Com. Sub. for H. B. 4013 - Clarifying venue in West Virginia state courts as it applies to nonresidents of the state - (Com. amend. and title amend. pending)

FIRST READING

- Com. Sub. for S. B. 94 - Prohibiting counties from regulating fireworks
- Com. Sub. for Com. Sub. for S. B. 141 - Expanding county assessment and collection of head tax on breeding cows
- Com. Sub. for S. B. 230 - Authorizing Department of Commerce promulgate legislative rules (original similar to HB4108)
- Com. Sub. for S. B. 361 - Relating to treatment supervision under Drug Offender Accountability and Treatment Act
- S. B. 371 - Relating to proceedings for voluntary custody for examination

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2018

Monday, February 5, 2018

2 p.m.

Banking & Insurance

(Room 451M)