

1009 SIS
S/B 5007

FILED

2001 OCT -4 P 4:58

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Fifth Extraordinary Session

ENROLLED

SENATE BILL NO. 5007

(By Senator Wooten, et al)

PASSED September 19, 2001

In Effect from Passage

FILED

2001 OCT -4 P 4:58

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 5007

(BY SENATORS WOOTON, BURNETTE, CALDWELL, HUNTER,
KESSLER, MINARD, OLIVERIO, REDD, ROSS, ROWE,
SNYDER, DEEM AND FACEMYER)

[Passed September 19, 2001; in effect from passage.]

AN ACT to repeal article thirty, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eight, article five, chapter three of said code; to amend and reenact section three, article ten of said chapter; to amend and reenact section twelve, article five, chapter sixteen of said code; to amend and reenact section ten, article two, chapter seventeen-b of said code; to amend and reenact section five, article one, chapter forty-two of said code; to amend and reenact sections two hundred two, two hundred five, two hundred sixteen, two hundred seventeen, two hundred twenty-one, two hundred twenty-five, two hundred twenty-six, three hundred three, three hundred four and three hundred five, article one, chapter forty-eight of said code; to amend and reenact sections four hundred one and four hundred four, article two of said chapter; to amend and reenact section one hundred one, article four of said chapter;

to amend and reenact sections one hundred two, one hundred three, one hundred seven, two hundred one, four hundred two, four hundred three, six hundred four, six hundred five, six hundred eleven and seven hundred two, article five of said chapter; to amend and reenact section two hundred three, article seven of said chapter; to amend and reenact sections one hundred two and one hundred five, article eight of said chapter; to amend and reenact sections one hundred four, two hundred two, four hundred three and six hundred three, article nine of said chapter; to amend and reenact sections one hundred five and one hundred six, article eleven of said chapter; to amend and reenact sections one hundred one, two hundred two, two hundred four, two hundred five, seven hundred one, nine hundred one and nine hundred two, article thirteen of said chapter; to amend and reenact sections one hundred one, one hundred six, two hundred four, four hundred two, four hundred five, five hundred one and eight hundred two, article fourteen of said chapter; to amend and reenact sections two hundred five, two hundred seven and two hundred eight, article fifteen of said chapter; to amend and reenact sections one hundred one, one hundred two and three hundred five, article sixteen of said chapter; to amend and reenact sections one hundred eight, one hundred eleven, one hundred fourteen, one hundred twenty-three and one hundred twenty-six, article eighteen of said chapter; to amend and reenact section one hundred two, article twenty of said chapter; to amend and reenact sections one hundred one and one hundred three, article twenty-four of said chapter; to amend and reenact sections two hundred four, two hundred five, two hundred nine, three hundred four, four hundred two, four hundred three, five hundred one, five hundred five, five hundred eight and five hundred ten, article twenty-seven of said chapter; to amend and reenact article two-a, chapter fifty-one of said code; to amend and reenact section one-a, article nine of said chapter; and to amend and reenact section twenty-eight-a, article one, chapter fifty-nine of said code, all relating generally to creating a family court system.

Be it enacted by the Legislature of West Virginia:

That article thirty, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section eight, article five, chapter three of said code be amended and reenacted; that section three, article ten of said chapter be amended and reenacted; that section twelve, article five, chapter sixteen of said code be amended and reenacted; that section ten, article two, chapter seventeen-b of said code be amended and reenacted; that section five, article one, chapter forty-two of said code be amended and reenacted; that sections two hundred two, two hundred five, two hundred sixteen, two hundred seventeen, two hundred twenty-one, two hundred twenty-five, two hundred twenty-six, three hundred three, three hundred four and three hundred five, article one, chapter forty-eight of said code be amended and reenacted; that sections four hundred one and four hundred four, article two of said chapter be amended and reenacted; that section one hundred one, article four of said chapter be amended and reenacted; that sections one hundred two, one hundred three, one hundred seven, two hundred one, four hundred two, four hundred three, six hundred four, six hundred five, six hundred eleven and seven hundred two, article five of said chapter be amended and reenacted; that section two hundred three, article seven of said chapter be amended and reenacted; that sections one hundred two and one hundred five, article eight of said chapter be amended and reenacted; that sections one hundred four, two hundred two, four hundred three and six hundred three, article nine of said chapter be amended and reenacted; that sections one hundred five and one hundred six, article eleven of said chapter be amended and reenacted; that sections one hundred one, two hundred two, two hundred four, two hundred five, seven hundred one, nine hundred one and nine hundred two, article thirteen of said chapter be amended and reenacted; that sections one hundred one, one hundred six, two hundred four, four hundred two, four hundred five, five hundred one and eight hundred two, article fourteen of said chapter be amended and reenacted; that sections two hundred five, two hundred seven and two hundred eight, article fifteen of said

chapter be amended and reenacted; that sections one hundred one, one hundred two and three hundred five, article sixteen of said chapter be amended and reenacted; that sections one hundred eight, one hundred eleven, one hundred fourteen, one hundred twenty-three and one hundred twenty-six, article eighteen of said chapter be amended and reenacted; that section one hundred two, article twenty of said chapter be amended and reenacted; that sections one hundred one and one hundred three, article twenty-four of said chapter be amended and reenacted; that sections two hundred four, two hundred five, two hundred nine, three hundred four, four hundred two, four hundred three, five hundred one, five hundred five, five hundred eight and five hundred ten, article twenty-seven of said chapter be amended and reenacted; that article two-a, chapter fifty-one of said code be amended and reenacted; that section one-a, article nine of said chapter be amended and reenacted; and that section twenty-eight-a, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

CHAPTER 3. ELECTIONS.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-8. Filing fees and their disposition.

1 Every person who becomes a candidate for nomination
2 for or election to office in any primary election shall, at
3 the time of filing the certificate of announcement as
4 required in this article, pay a filing fee as follows:

5 (a) A candidate for president of the United States, for
6 vice president of the United States, for United States
7 senator, for member of the United States House of Repre-
8 sentatives, for governor and for all other state elective
9 offices shall pay a fee equivalent to one percent of the
10 annual salary of the office for which the candidate an-
11 nounces;

12 (b) A candidate for the office of judge of a circuit court
13 and judge of a family court shall pay a fee equivalent to

14 one percent of the total annual salary of the office for
15 which the candidate announces;

16 (c) A candidate for member of the House of Delegates
17 shall pay a fee of one-half percent of the total annual
18 salary of the office and a candidate for state senator shall
19 pay a fee of one percent of the total annual salary of the
20 office;

21 (d) A candidate for sheriff, prosecuting attorney, circuit
22 clerk, county clerk, assessor, member of the county
23 commission and magistrate shall pay a fee equivalent to
24 one percent of the annual salary of the office for which the
25 candidate announces. A candidate for county board of
26 education shall pay a fee of twenty-five dollars. A candi-
27 date for any other county office shall pay a fee of ten
28 dollars;

29 (e) Delegates to the national convention of any political
30 party shall pay the following filing fees:

31 A candidate for delegate-at-large shall pay a fee of
32 twenty dollars; and a candidate for delegate from a
33 congressional district shall pay a fee of ten dollars;

34 (f) Candidates for members of political executive
35 committees and other political committees shall pay the
36 following filing fees:

37 A candidate for member of a state executive committee
38 of any political party shall pay a fee of twenty dollars; a
39 candidate for member of a county executive committee of
40 any political party shall pay a fee of ten dollars; and a
41 candidate for member of a congressional, senatorial or
42 delegate district committee of any political party shall pay
43 a fee of five dollars.

44 Candidates filing for an office to be filled by the voters
45 of one county shall pay the filing fee to the clerk of the
46 circuit court and candidates filing for an office to be filled
47 by the voters of more than one county shall pay the filing

48 fee to the secretary of state at the time of filing their
49 certificates of announcement and no certificate of an-
50 nouncement shall be received until the filing fee is paid.

51 All moneys received by such clerk from such fees shall
52 be credited to the general county fund. Moneys received
53 by the secretary of state from fees paid by candidates for
54 offices to be filled by all the voters of the state shall be
55 deposited in a special fund for that purpose and shall be
56 apportioned and paid by him to the several counties on the
57 basis of population and that received from candidates
58 from a district or judicial circuit of more than one county
59 shall be apportioned to the counties comprising the district
60 or judicial circuit in like manner. When such moneys are
61 received by sheriffs, it shall be credited to the general
62 county fund.

ARTICLE 10. FILLING VACANCIES.

**§3-10-3. Vacancies in offices of state officials, United States
senators and judges.**

1 Any vacancy occurring in the office of secretary of state,
2 auditor, treasurer, attorney general, commissioner of
3 agriculture, United States senator, judge of the supreme
4 court of appeals or in any office created or made elective
5 to be filled by the voters of the entire state, judge of a
6 circuit court or judge of a family court is filled by the
7 governor of the state by appointment. If the unexpired
8 term of a judge of the supreme court of appeals, a judge of
9 the circuit court or judge of a family court is for less than
10 two years or if the unexpired term of any other office
11 named in this section is for a period of less than two years
12 and six months, the appointment to fill the vacancy is for
13 the unexpired term. If the unexpired term of any office is
14 for a longer period than above specified, the appointment
15 is until a successor to the office has timely filed a certifi-
16 cate of candidacy, has been nominated at the primary
17 election next following such timely filing and has thereaf-
18 ter been elected and qualified to fill the unexpired term.

19 Proclamation of any election to fill an unexpired term is
20 made by the governor of the state and, in the case of an
21 office to be filled by the voters of the entire state, must be
22 published prior to the election as a Class II-0 legal adver-
23 tisement in compliance with the provisions of article three,
24 chapter fifty-nine of this code and the publication area for
25 the publication is each county of the state. If the election
26 is to fill a vacancy in the office of judge of a circuit court
27 or judge of a family court, the proclamation must be
28 published prior to the election as a Class II-0 legal adver-
29 tisement in compliance with the provisions of article three,
30 chapter fifty-nine of this code and the publication area for
31 such publication is each county in the judicial or family
32 court circuit.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-12. Birth registration generally; acknowledgment of paternity.

1 (a) A certificate of birth for each live birth which occurs
2 in this state shall be filed with the local registrar of the
3 district in which the birth occurs within seven days after
4 the birth and shall be registered by the registrar if it has
5 been completed and filed in accordance with this section.
6 When a birth occurs in a moving conveyance, a birth
7 certificate shall be filed in the district in which the child
8 is first removed from the conveyance. When a birth occurs
9 in a district other than where the mother resides, a birth
10 certificate shall be filed in the district in which the child
11 is born and in the district in which the mother resides.

12 (b) When a birth occurs in an institution, the person in
13 charge of the institution or his or her designated represen-
14 tative shall obtain the personal data, prepare the certifi-
15 cate, secure the signatures required for the certificate and
16 file it with the local registrar. The physician in attendance
17 shall certify to the facts of birth and provide the medical

18 information required for the certificate within five days
19 after the birth.

20 (c) When a birth occurs outside an institution, the
21 certificate shall be prepared and filed by one of the
22 following in the indicated order of priority:

23 (1) The physician in attendance at or immediately after
24 the birth or in the absence of such a person;

25 (2) Any other person in attendance at or immediately
26 after the birth or in the absence of such a person; or

27 (3) The father, the mother or, in the absence of the father
28 and the inability of the mother, the person in charge of the
29 premises where the birth occurred.

30 (d) Either of the parents of the child shall sign the
31 certificate of live birth to attest to the accuracy of the
32 personal data entered thereon, in time to permit its filing
33 within the seven days prescribed above.

34 (e) In order that each county may have a complete
35 record of the births occurring in said county, the local
36 registrar shall transmit each month to the county clerk of
37 his or her county the copies of the certificates of all births
38 occurring in said county, from which copies the clerk shall
39 compile a record of such births and shall enter the same in
40 a systematic and orderly way in a well-bound register of
41 births, which said register shall be a public record:
42 *Provided*, That such copies and register shall not state that
43 any child was either legitimate or illegitimate. The form
44 of said register of births shall be prescribed by the state
45 registrar of vital statistics.

46 (f) In addition to the personal data furnished for the
47 certificate of birth issued for a live birth in accordance
48 with the provisions of this section, a person whose name is
49 to appear on such certificate of birth as a parent shall
50 contemporaneously furnish to the person preparing and
51 filing the certificate of birth the social security account

52 number (or numbers, if the parent has more than one such
53 number) issued to the parent. A record of the social
54 security number or numbers shall be filed with the local
55 registrar of the district in which the birth occurs within
56 seven days after such birth and the local registrar shall
57 transmit such number or numbers to the state registrar of
58 vital statistics in the same manner as other personal data
59 is transmitted to the state registrar.

60 (g) If the mother was married either at the time of
61 conception or birth, the name of the husband shall be
62 entered on the certificate as the father of the child unless
63 paternity has been determined otherwise by a court of
64 competent jurisdiction pursuant to the provisions of article
65 twenty-four, chapter forty-eight of this code or other
66 applicable law, in which case the name of the father as
67 determined by the court shall be entered.

68 (h) If the mother was not married either at the time of
69 conception or birth, the name of the father shall not be
70 entered on the certificate of birth without the written
71 consent of the mother and of the person to be named as the
72 father unless a determination of paternity has been made
73 by a court of competent jurisdiction pursuant to the
74 provisions of article twenty-four, chapter forty-eight of
75 this code or other applicable law, in which case the name
76 of the father as determined by the court shall be entered.

77 (i) A written, notarized acknowledgment of both the
78 man and the woman that the man is the father of a named
79 child legally establishes the man as the father of the child
80 for all purposes and child support may be established
81 pursuant to the provisions of chapter forty-eight of this
82 code.

83 (1) The written acknowledgment shall include filing
84 instructions, the parties' social security numbers and
85 addresses and a statement, given orally and in writing, of
86 the alternatives to, the legal consequences of and the rights
87 and obligations of acknowledging paternity, including, but

88 not limited to, the duty to support a child. If either of the
89 parents is a minor, the statement shall include an explana-
90 tion of any rights that may be afforded due to the minority
91 status.

92 (2) The failure or refusal to include all information
93 required by subdivision (1) of this subsection shall not
94 affect the validity of the written acknowledgment, in the
95 absence of a finding by a court of competent jurisdiction
96 that the acknowledgment was obtained by fraud, duress or
97 material mistake of fact, as provided in subdivision (4) of
98 this subsection.

99 (3) The original written acknowledgment should be filed
100 with the state registrar of vital statistics. Upon receipt of
101 any acknowledgment executed pursuant to this section,
102 the registrar shall forward the copy of the acknowledg-
103 ment to the bureau for child support enforcement and the
104 parents, if the address of the parents is known to the
105 registrar. If a birth certificate for the child has been
106 previously issued which is incorrect or incomplete, a new
107 birth certificate shall be issued.

108 (4) An acknowledgment executed under the provisions
109 of this subsection may be rescinded as follows:

110 (A) The parent wishing to rescind the acknowledgment
111 shall file with the clerk of the circuit court of the county in
112 which the child resides a verified complaint stating the
113 name of the child, the name of the other parent, the date of
114 the birth of the child, the date of the signing of the affida-
115 vit and a statement that he or she wishes to rescind the
116 acknowledgment of the paternity. If the complaint is filed
117 more than sixty days from the date of execution or the
118 date of an administrative or judicial proceeding relating to
119 the child in which the signatory is a party, the complaint
120 shall include specific allegations concerning the elements
121 of fraud, duress or material mistake of fact.

122 (B) The complaint shall be served upon the other parent
123 as provided in rule 4 of the West Virginia rules of civil
124 procedure.

125 (C) The family court judge shall hold a hearing within
126 sixty days of the service of process upon the other parent.
127 If the complaint was filed within sixty days of the date the
128 acknowledgment of paternity was executed, the court shall
129 order the acknowledgment to be rescinded without any
130 requirement of a showing of fraud, duress or material
131 mistake of fact. If the complaint was filed more than sixty
132 days from the date of execution or the date of an adminis-
133 trative or judicial proceeding relating to the child in which
134 the signatory is a party, the court may only set aside the
135 acknowledgment upon a finding, by clear and convincing
136 evidence, that the acknowledgment was executed under
137 circumstances of fraud, duress or material mistake of fact.
138 The circuit clerk shall forward a copy of any order entered
139 pursuant to this proceeding to the state registrar of vital
140 statistics by certified mail.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-10. Restricted licenses.

1 (a) The division upon issuing a driver's license shall have
2 authority whenever good cause appears to impose restric-
3 tions suitable to the licensee's driving ability with respect
4 to the type of or special mechanical control devices
5 required on a motor vehicle which the licensee may
6 operate or such other restrictions applicable to the licensee
7 as the division may determine to be appropriate to assure
8 the safe operation of a motor vehicle by the licensee.

9 (b) The division shall issue a restricted license to a
10 person who has failed to pay overdue child support or
11 comply with subpoenas or warrants relating to paternity
12 or child support proceedings if a court orders restrictions
13 of the person's license as provided in article fifteen,
14 chapter forty-eight of this code.

15 (c) The division may either issue a special restricted
16 license or may set forth such restrictions upon the usual
17 license form.

18 (d) The division may upon receiving satisfactory evi-
19 dence of any violation of the restrictions of such license
20 suspend or revoke the same but the licensee shall be
21 entitled to a hearing as upon a suspension or revocation
22 under this chapter.

23 (e) It is a misdemeanor for any person to operate a motor
24 vehicle in any manner in violation of the restrictions
25 imposed in a restricted license issued to such person.

CHAPTER 42. DESCENT AND DISTRIBUTION.

ARTICLE 1. DESCENT.

§42-1-5. From whom children born out of wedlock inherit.

1 (a) Children born out of wedlock shall be capable of
2 inheriting and transmitting inheritance on the part of their
3 mother and father.

4 (b) Prior to the death of the father, paternity shall be
5 established by:

6 (1) Acknowledgment that he is the child's father;

7 (2) Adjudication on the merits pursuant to the provisions
8 of article twenty-four, chapter forty-eight of this code; or

9 (3) By order of a court of competent jurisdiction issued
10 in another state.

11 (c) After the death of the father, paternity shall
12 be established if, after a hearing on the merits, the
13 court shall find, by clear and convincing evidence, that the
14 man is the father of the child. The civil action shall be
15 filed in the family court of the county where the adminis-
16 tration of the decedent's estate has been filed or could be
17 filed:

18 (1) Within six months of the date of the final order of the
19 county commission admitting the decedent's will to
20 probate or commencing intestate administration of the
21 estate; or

22 (2) If none of the above apply, within six months from
23 the date of decedent's death.

24 (d) Any putative child who at the time of the decedent's
25 death is under the age of eighteen years, a convict or a
26 mentally incapacitated person may file such civil action
27 within six months after he or she becomes of age or the
28 disability ceases.

29 (e) The provisions of this section do not apply where the
30 putative child has been lawfully adopted by another man
31 and stands to inherit property or assets through his
32 adopted father.

33 (f) The provisions of this section do not apply where the
34 father or putative father has expressly disinherited the
35 child in a provision of his will.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

PART 2. DEFINITIONS.

§48-1-202. Adjusted gross income defined.

1 (a) "Adjusted gross income" means gross income less the
2 payment of previously ordered child support, spousal
3 support or separate maintenance.

4 (b) A further deduction from gross income for additional
5 dependents may be allowed by the court if the parent has
6 legal dependents other than those for whom support is
7 being determined. An adjustment may be used in the
8 establishment of a child support order or in a review of a
9 child support order. However, in cases where a modifica-
10 tion is sought, the adjustment should not be used to the
11 extent that it results in a support amount lower than the
12 previously existing order for the children who are the
13 subject of the modification. The court may elect to use the
14 following adjustment because it allots equitable shares of
15 support to all of the support obligor's legal dependents.

16 Using the income of the support obligor only, determine
17 the basic child support obligation (from the table of basic
18 child support obligations in section 13-301 of this chapter)
19 for the number of additional legal dependents living with
20 the support obligor. Multiply this figure by 0.75 and
21 subtract this amount from the support obligor's gross
22 income.

23 (c) As used in this section, the term "legal dependents"
24 means:

25 (1) Minor natural or adopted children who live with the
26 parent; and

27 (2) Natural or adopted adult children who are totally
28 incapacitated because of physical or emotional disabilities
29 and for whom the parent owes a duty of support.

§48-1-205. Attributed income defined.

1 (a) "Attributed income" means income not actually
2 earned by a parent but which may be attributed to the
3 parent because he or she is unemployed, is not working full
4 time or is working below full earning capacity or has
5 nonperforming or under-performing assets. Income may be
6 attributed to a parent if the court evaluates the parent's
7 earning capacity in the local economy (giving consider-
8 ation to relevant evidence that pertains to the parent's
9 work history, qualifications, education and physical or
10 mental condition) and determines that the parent is
11 unemployed, is not working full time or is working below
12 full earning capacity. Income may also be attributed to a
13 parent if the court finds that the obligor has
14 nonperforming or under-performing assets.

15 (b) If an obligor: (1) Voluntarily leaves employment or
16 voluntarily alters his or her pattern of employment so as to
17 be unemployed, underemployed or employed below full
18 earning capacity; (2) is able to work and is available for
19 full-time work for which he or she is fitted by prior
20 training or experience; and (3) is not seeking employment

21 in the manner that a reasonably prudent person in his or
22 her circumstances would do, then an alternative method
23 for the court to determine gross income is to attribute to
24 the person an earning capacity based on his or her previ-
25 ous income. If the obligor's work history, qualifications,
26 education or physical or mental condition cannot be
27 determined, or if there is an inadequate record of the
28 obligor's previous income, the court may, as a minimum,
29 base attributed income on full-time employment (at forty
30 hours per week) at the federal minimum wage in effect at
31 the time the support obligation is established.

32 (c) Income shall not be attributed to an obligor who is
33 unemployed or underemployed or is otherwise working
34 below full earning capacity if any of the following condi-
35 tions exist:

36 (1) The parent is providing care required by the children
37 to whom the parties owe a joint legal responsibility for
38 support and such children are of preschool age or are
39 handicapped or otherwise in a situation requiring particu-
40 lar care by the parent;

41 (2) The parent is pursuing a plan of economic
42 self-improvement which will result, within a reasonable
43 time, in an economic benefit to the children to whom the
44 support obligation is owed, including, but not limited to,
45 self-employment or education: *Provided*, That if the
46 parent is involved in an educational program, the court
47 shall ascertain that the person is making substantial
48 progress toward completion of the program;

49 (3) The parent is, for valid medical reasons, earning an
50 income in an amount less than previously earned; or

51 (4) The court makes a written finding that other circum-
52 stances exist which would make the attribution of income
53 inequitable: *Provided*, That in such case, the court may
54 decrease the amount of attributed income to an extent
55 required to remove such inequity.

56 (d) The court may attribute income to a parent's
57 nonperforming or under-performing assets, other than the
58 parent's primary residence. Assets may be considered to be
59 nonperforming or under-performing to the extent that
60 they do not produce income at a rate equivalent to the
61 current six-month certificate of deposit rate or such other
62 rate that the court determines is reasonable.

§48-1-216. Court defined.

1 "Court" means a family court of this state unless the
2 context in which such term is used clearly indicates that
3 reference to some other court is intended.

§48-1-217. Court of competent jurisdiction defined.

1 "Court of competent jurisdiction" means a circuit court
2 or family court within this state or a court or administra-
3 tive agency of another state having jurisdiction and due
4 legal authority to deal with the subject matter of the
5 establishment and enforcement of support obligations.
6 Whenever in this chapter reference is made to an order of
7 a court of competent jurisdiction, or similar wording, such
8 language shall be interpreted so as to include orders of an
9 administrative agency entered in a state where enforceable
10 orders may by law be properly made and entered by such
11 administrative agency.

§48-1-221. Divorce defined.

1 "Divorce" means the judicial termination of a marriage
2 contract. The termination of a marriage contract must be
3 based on misconduct or other statutory cause arising after
4 the marriage. A divorce is established by the order of a
5 family court or circuit court that changes the status of a
6 husband and wife from a state of marriage to that of single
7 persons.

§48-1-225. Extraordinary medical expenses defined.

1 "Extraordinary medical expenses" means uninsured
2 medical expenses in excess of two hundred fifty dollars per

3 year per child which are recurring and can reasonably be
4 predicted by the court at the time of establishment or
5 modification of a child support order. Such expenses shall
6 include, but not be limited to, insurance copayments and
7 deductibles, reasonable costs for necessary orthodontia,
8 dental treatment, asthma treatments, physical therapy,
9 vision therapy and eye care and any uninsured chronic
10 health problem.

§48-1-226. Family court judge defined.

1 “Family court judge” means a family court judge
2 appointed or elected and authorized to hear certain
3 domestic relations actions as provided in article two-a,
4 chapter fifty-one of this code.

PART 3. MISCELLANEOUS PROVISIONS
RELATING TO DOMESTIC RELATIONS.

§48-1-303. Confidentiality of domestic relations court files.

1 (a) All orders in domestic relations actions entered in the
2 civil order books by circuit clerks are public records.

3 (b) Upon the filing of a domestic relations action, all
4 pleadings, exhibits or other documents, other than orders,
5 that are contained in the court file are confidential and not
6 open for public inspection either during the pendency of
7 the case or after the case is closed.

8 (c) When sensitive information has been disclosed during
9 a hearing or in pleadings, evidence or documents filed in
10 the record, the court may, sua sponte or upon motion of a
11 party, order such information sealed in the court file.
12 Sealed documents or court files can only be opened by
13 order of a circuit or family court judge.

14 (d) The parties, their designees, their attorneys, a duly
15 appointed guardian ad litem or any other person who has
16 standing to seek modification or enforcement of a support
17 order has the right to examine and copy any document in
18 a confidential court file that has not been sealed by court

19 order. Upon motion and for good cause shown, the court
20 may permit a person who is not a party to the action to
21 examine and copy any documents that are necessary to
22 further the interests of justice.

23 (e) The clerk of the circuit court shall keep a written log
24 of all persons who examine confidential documents as
25 provided for in this section. Every person who examines
26 confidential documents shall first sign the clerk's written
27 log, except for a circuit judge or family court judge before
28 whom the case is pending, or court personnel acting within
29 the scope of their duties. The clerk shall record the time
30 and date of every examination of confidential documents.
31 The log must be retained by the clerk and must be avail-
32 able upon request for inspection by the circuit judge or the
33 family court judge.

§48-1-304. Proceedings in contempt.

1 (a) Upon a verified petition for contempt, notice of
2 hearing and hearing, if the petition alleges criminal
3 contempt or the court informs the parties that the matter
4 will be treated and tried as a criminal contempt, the
5 matter shall be tried in the circuit court before a jury,
6 unless the party charged with contempt shall knowingly
7 and intelligently waive the right to a jury trial with the
8 consent of the court and the other party. If the jury, or the
9 circuit court sitting without a jury, shall find the defen-
10 dant in contempt for willfully failing to comply with an
11 order of the court made pursuant to the provisions of
12 articles three, four, five, eight, nine, eleven, twelve,
13 fourteen or fifteen of this chapter, as charged in the
14 petition, the court may find the person to be in criminal
15 contempt and may commit such person to the county jail
16 for a determinate period not to exceed six months.

17 (b) If trial is had under the provisions of subsection (a)
18 of this section and the court elects to treat a finding of
19 criminal contempt as a civil contempt and the matter is
20 not tried before a jury and the court finds the defendant in

21 contempt for willfully failing to comply with an order of
22 the court made pursuant to the provisions of articles three,
23 four, five, eight, nine, eleven, twelve, fourteen or fifteen of
24 this chapter, and if the court further finds the person has
25 the ability to purge himself of contempt, the court shall
26 afford the contemnor a reasonable time and method
27 whereby he may purge himself of contempt. If the
28 contemnor fails or refuses to purge himself of contempt,
29 the court may confine the contemnor to the county jail for
30 an indeterminate period not to exceed six months or until
31 such time as the contemnor has purged himself, whichever
32 shall first occur. If the petition alleges civil contempt, the
33 matter shall be heard by the family court. The family court
34 has the same power and authority as the circuit court
35 under the provisions of this section for criminal contempt
36 proceedings which the circuit court elects to treat as civil
37 contempt.

38 (c) In the case of a charge of contempt based upon the
39 failure of the defendant to pay alimony, child support or
40 separate maintenance, if the court or jury finds that the
41 defendant did not pay because he was financially unable
42 to pay, the defendant may not be imprisoned on charges of
43 contempt of court.

44 (d) Regardless of whether the court or jury finds the
45 defendant to be in contempt, if the court shall find that a
46 party is in arrears in the payment of alimony, child
47 support or separate maintenance ordered to be paid under
48 the provisions of this chapter, the court shall enter judg-
49 ment for such arrearage and award interest on such
50 arrearage from the due date of each unpaid installment.
51 Following any hearing wherein the court finds that a party
52 is in arrears in the payment of alimony, child support or
53 separate maintenance, the court may, if sufficient assets
54 exist, require security to ensure the timely payment of
55 future installments.

56 (e) At any time during a contempt proceeding the court
57 may enter an order to attach forthwith the body of, and

58 take into custody, any person who refuses or fails to
59 respond to the lawful process of the court or to comply
60 with an order of the court. Such order of attachment shall
61 require the person to be brought forthwith before the court
62 or the judge thereof in any county in which the court may
63 then be sitting.

§48-1-305. Suit money, counsel fees and costs.

1 (a) Costs may be awarded to either party as justice
2 requires and in all cases the court, in its discretion, may
3 require payment of costs at any time and may suspend or
4 withhold any order until the costs are paid.

5 (b) The court may compel either party to pay attorney's
6 fees and court costs reasonably necessary to enable the
7 other party to prosecute or defend the action. An order for
8 temporary relief awarding attorney's fees and court costs
9 may be modified at any time during the pendency of the
10 action, as the exigencies of the case or equity and justice
11 may require, including, but not limited to, a modification
12 which would require full or partial repayment of fees and
13 costs by a party to the action to whom or on whose behalf
14 payment of such fees and costs was previously ordered. If
15 an appeal is taken or an intention to appeal is stated, the
16 court may further order either party to pay attorney fees
17 and costs on appeal.

18 (c) When it appears to the court that a party has in-
19 curred attorney fees and costs unnecessarily because the
20 opposing party has asserted unfounded claims or defenses
21 for vexatious, wanton or oppressive purposes, thereby
22 delaying or diverting attention from valid claims or
23 defenses asserted in good faith, the court may order the
24 offending party, or his or her attorney, or both, to pay
25 reasonable attorney's fees and costs to the other party.

ARTICLE 2. MARRIAGE.

PART 4. MARRIAGE CEREMONY.

§48-2-401. Persons authorized to perform marriages.

1 A religious representative who has complied with the
2 provisions of section 2-402, a family court judge, a circuit
3 judge or a justice of the supreme court of appeals, is
4 authorized to celebrate the rites of marriage in any county
5 of this state. Celebration or solemnization of a marriage
6 means the performance of the formal act or ceremony by
7 which a man and woman contract marriage and assume
8 the status of husband and wife.

9 For purposes of this chapter, the term “religious repre-
10 sentative” means a minister, priest or rabbi and includes,
11 without being limited to, a leader or representative of a
12 generally recognized spiritual assembly, church or reli-
13 gious organization which does not formally designate or
14 recognize persons as ministers, priests or rabbis.

§48-2-404. Ritual for ceremony of marriage by a judge or justice.

1 The ritual for the ceremony of marriages by a family
2 court judge, a circuit judge or a justice of the supreme
3 court of appeals may be as follows: At the time appointed,
4 the persons to be married, being qualified according to the
5 law of the state of West Virginia, standing together facing
6 the judge, the man at the judge’s left hand and the woman
7 at the right, the judge shall say:

8 “We are gathered here, in the presence of these wit-
9 nesses, to join together this man and this woman in
10 matrimony. It is not to be entered into unadvisedly but
11 discreetly, sincerely and in dedication of life.”

12 (Then shall the judge say to the man, using his christian
13 name:)

14 “N., wilt thou have this woman to be thy wedded wife,
15 to live together in the bonds of matrimony? Wilt thou love
16 her, comfort her, honor and keep her in sickness and in
17 health?”

18 (Then the man shall answer:)

19 "I will."

20 (Then the judge shall say to the woman, using her
21 christian name:)

22 "N., wilt thou have this man to be thy wedded husband,
23 to live together in the bonds of matrimony? Wilt thou love
24 him, comfort him, honor and keep him in sickness and
25 health?"

26 (The woman shall answer:)

27 "I will."

28 (Then may the judge say:)

29 "Who giveth this woman to be married to this man?"

30 (The father of the woman, or whoever giveth her in
31 marriage, shall answer:)

32 "I do."

33 (Then the judge shall ask the man to say after him:)

34 "I, N., take thee, N., to be my wedded wife, to have and
35 to hold, from this day forward, for better, for worse, for
36 richer, for poorer, in sickness and in health, to love and to
37 cherish, as long as life shall last, and thereto I pledge thee
38 my faith."

39 (Then the judge shall ask the woman to repeat after
40 him:)

41 "I, N., take thee, N., to be my wedded husband, to have
42 and to hold, from this day forward, for better, for worse,
43 for richer, for poorer, in sickness and in health, to love and
44 to cherish, as long as life shall last, and thereto I pledge
45 thee my faith."

46 (Then, if there be a ring, the judge shall say:)

47 “The wedding ring is an outward and visible
48 sign—signifying unto all, the uniting of this man and this
49 woman in matrimony.”

50 (The judge then shall deliver the ring to the man to put
51 on the third finger of the woman’s left hand. The man
52 shall say after the judge:)

53 “In token and pledge of the vow between us made, with
54 this ring, I thee wed.”

55 (Then, if there be a second ring, the judge shall deliver
56 it to the woman to put upon the third finger of the man’s
57 left hand; and the woman shall say after the judge:)

58 “In token and pledge of the vow between us made, with
59 this ring, I thee wed.”

60 (Then shall the judge say:)

61 “Forasmuch as N. and N. have consented together in
62 wedlock, and have witnessed the same each to the other
63 and before these witnesses and thereto have pledged their
64 faith each to the other, and have declared the same by
65 giving (and receiving) a ring, by virtue of the authority
66 vested in me as judge of this court, I pronounce that they
67 are husband and wife together.”

ARTICLE 4. SEPARATE MAINTENANCE.

§48-4-101. Where an action for separate maintenance may be brought.

1 An action for separate maintenance may be brought in
2 the family court of any county where an action for divorce
3 between the parties could be brought. An action for
4 separate maintenance may be brought whether or not a
5 divorce is prayed for.

ARTICLE 5. DIVORCE.

PART 1. GENERAL PROVISIONS.

§48-5-102. Subject matter jurisdiction.

1 (a) The Legislature hereby finds and declares that it has
2 the authority to establish, by general law, the jurisdiction
3 of circuit courts and family courts over domestic relations
4 matters.

5 (b) The circuit courts and family courts of this state, by
6 act of the Legislature, are vested with concurrent jurisdic-
7 tion over the subject matter of divorce. Generally, a family
8 court has the right and authority to adjudicate actions for
9 divorce and the power to carry its judgment and order into
10 execution. Circuit courts have limited jurisdiction in
11 divorce actions as provided in section two, article two-a,
12 chapter fifty-one of this code and as otherwise specifically
13 provided in this chapter. Jurisdiction of the subject matter
14 of divorce embraces the power to determine every issue or
15 controverted question in an action for divorce, according
16 to the court's view of the law and the evidence.

§48-5-103. Jurisdiction of parties; service of process.

1 (a) In an action for divorce, it is immaterial where the
2 marriage was celebrated, where the parties were domiciled
3 at the time the grounds for divorce arose or where the
4 marital offense was committed. If one or both of the
5 parties is domiciled in this state at the time the action is
6 commenced, the circuit courts and family courts of this
7 state have jurisdiction to grant a divorce for any grounds
8 fixed by law in this state, without any reference to the law
9 of the place where the marriage occurred or where the
10 marital offense was committed.

11 (b) A judgment order may be entered upon service of
12 process in the manner specified in the rules of civil proce-
13 dure for the service of process upon individuals.

§48-5-107. Parties to a divorce action.

1 (a) Either or both of the parties to a marriage may
2 initiate an action for divorce.

3 (b) A spouse who is under the age of majority has
4 standing in a divorce action to sue, answer or plead by a
5 next friend.

6 (c) An incompetent or insane person shall sue, answer or
7 plead by his or her committee. If a person has not been
8 adjudicated incompetent or insane and has not been
9 divested of the power to act on his or her own behalf, it is
10 presumed that the person has the capacity to bring the
11 action or be made a party respondent. This presumption
12 may be rebutted by evidence which shows that the person
13 cannot reasonably understand the nature and purpose of
14 the action and the effect of his or her acts with reference
15 to the action.

16 (d) The appointment of a guardian ad litem for a minor,
17 an incompetent or an insane party is not required unless
18 specifically ordered by the judge hearing the action.

19 (e) Anyone charged as a particeps criminis shall be made
20 a party to a divorce action, upon his or her application to
21 the court, subject to such terms and conditions as the court
22 may prescribe.

23 (f) In a divorce action where the interests of the minor
24 children of the parties are or may be substantially differ-
25 ent from those of either or both of the parents and the best
26 interests of the children may be in conflict with the desires
27 of either or both parents, the court may make the children
28 parties respondent and appoint a guardian ad litem to
29 advocate and protect their rights and welfare.

PART 2. GROUNDS FOR DIVORCE.

§48-5-201. Grounds for divorce; irreconcilable differences.

1 The court may order a divorce if the complaint alleges
2 that irreconcilable differences exist between the parties
3 and an answer is filed admitting that allegation. A
4 complaint alleging irreconcilable differences shall set forth
5 the names of any dependent children of either or both of

6 the parties. A divorce on this ground does not require
7 corroboration of the irreconcilable differences or of the
8 issues of jurisdiction or venue. The court may approve,
9 modify or reject any agreement of the parties and make
10 orders concerning spousal support, custodial responsibil-
11 ity, child support, visitation rights or property interests.

PART 4. PRACTICE AND PROCEDURE.

§48-5-402. Petition for divorce.

1 (a) An action for divorce is instituted by a verified
2 petition and the formal style and the caption for all
3 pleadings is "In Re the marriage of _____ and _____".
4 The parties shall be identified in all pleadings as "peti-
5 tioner" and "respondent".

6 (b) The petition must set forth the ground or grounds for
7 divorce. It is not necessary to allege the facts constituting
8 a ground relied on and a petition or counter-petition is
9 sufficient if a ground for divorce is alleged in the language
10 of the statute as set forth in this article. The court has the
11 discretionary authority to grant a motion to require a more
12 definite and certain statement, set forth in ordinary and
13 concise language, alleging facts and not conclusions of
14 law.

15 (c) If the jurisdiction of the court to grant a divorce
16 depends upon the existence of certain facts, including, but
17 not limited to, facts showing domicil or domicil for a
18 certain length of time, the petition must allege those facts.
19 It is not necessary that allegations showing requisite
20 domicil be in the language of the statute, but they should
21 conform substantially thereto so that everything material
22 to the fact of requisite domicil can be ascertained there-
23 from.

24 (d) A petition shall not be taken for confessed and
25 whether the respondent answers or not, the case shall be
26 tried and heard independently of the admissions of either
27 party in the pleadings or otherwise. No judgment order

28 shall be granted on the uncorroborated testimony of the
29 parties or either of them, except for a proceeding in which
30 the grounds for divorce are irreconcilable differences.

31 (e) The supreme court of appeals shall develop and
32 provide forms for petitions filed pursuant to this section
33 and for answers filed pursuant to section 5-403. The forms
34 shall be made available for distribution in the offices of
35 the clerks of the circuit courts and in the offices of the
36 secretary-clerks to the family court judges.

§48-5-403. Answer to petition.

1 (a) The responsive pleading to a petition for divorce is
2 denominated an answer. The form and requisites for an
3 answer to a petition for divorce are governed by the rules
4 of civil procedure.

5 (b) Except as provided in subsection (c) of this section,
6 an allegedly guilty party who relies upon an affirmative
7 defense must assert such defense by both pleadings and
8 proof. Affirmative defenses include, but are not limited to,
9 condonation, connivance, collusion, recrimination, insan-
10 ity and lapse of time.

11 (c) In an action in which a party seeks a divorce based
12 on an allegation that the parties have lived separate and
13 apart in separate places of abode without any cohabitation
14 and without interruption for one year, the affirmative
15 defenses, including, but not limited to, condonation,
16 connivance, collusion, recrimination, insanity and lapse of
17 time, shall not be raised.

PART 6. JUDGMENT ORDERING DIVORCE.

§48-5-604. Use and occupancy of marital home.

1 (a) The court may award the exclusive use and occu-
2 pancy of the marital home to a party. An order granting
3 use and occupancy of the marital home shall include the
4 use of any necessary household goods, furniture and

5 furnishings. The order shall establish a definite period for
6 the use and occupancy, ending at a specific time set forth
7 in the order, subject to modification upon the petition of
8 either party.

9 (b) Generally, an award of the exclusive use and occu-
10 pancy of the marital home is appropriate when necessary
11 to accommodate rearing minor children of the parties.
12 Otherwise, the court may award exclusive use and occu-
13 pancy only in extraordinary cases supported by specific
14 findings set forth in the order that grants relief.

15 (c) An order awarding the exclusive use and occupancy
16 of the marital home may also require payments to third
17 parties for home loan installments, land contract pay-
18 ments, rent, property taxes and insurance coverage. When
19 requiring third-party payments, the court shall reduce
20 them to a fixed monetary amount set forth in the order.
21 The court shall specify whether third-party payments or
22 portions of payments are spousal support, child support, a
23 partial distribution of marital property or an allocation of
24 marital debt. Unless the court identifies third-party
25 payments as child support payments or as installment
26 payments for the distribution of marital property, then
27 such payments are spousal support. If the court does not
28 identify the payments and the parties have waived any
29 right to receive spousal support, the court may identify the
30 payments upon motion by any party.

31 (d) This section is not intended to abrogate a contract
32 between either party and a third party or affect the rights
33 and liabilities of either party or a third party under the
34 terms of a contract.

§48-5-605. Use and possession of motor vehicles.

1 (a) The court may award the exclusive use and posses-
2 sion of a motor vehicle or vehicles to either of the parties.

3 (b) The court may require payments to third parties in
4 the form of automobile loan installments or insurance

5 coverage, if coverage is available at reasonable rates.
6 When requiring third-party payments, the court shall
7 reduce them to a fixed monetary amount set forth in the
8 order. The court shall specify whether third-party pay-
9 ments or portions of payments are spousal support or
10 installment payments for the distribution of marital
11 property.

12 (c) This section is not intended to abrogate a contract
13 between either party and a third party or affect the rights
14 and liabilities of either party or a third party under the
15 terms of a contract.

§48-5-611. Suit money, counsel fees and costs.

1 (a) Costs may be awarded to either party as justice
2 requires, and in all cases the court, in its discretion, may
3 require payment of costs at any time and may suspend or
4 withhold any order until the costs are paid.

5 (b) The court may compel either party to pay attorney's
6 fees and court costs reasonably necessary to enable the
7 other party to prosecute or defend the action. An order for
8 temporary relief awarding attorney's fees and court costs
9 may be modified at any time during the pendency of the
10 action, as the exigencies of the case or equity and justice
11 may require, including, but not limited to, a modification
12 which would require full or partial repayment of fees and
13 costs by a party to the action to whom or on whose behalf
14 payment of such fees and costs was previously ordered. If
15 an appeal be taken or an intention to appeal be stated, the
16 court may further order either party to pay attorney fees
17 and costs on appeal.

18 (c) When it appears to the court that a party has in-
19 curred attorney's fees and costs unnecessarily because the
20 opposing party has asserted unfounded claims or defenses
21 for vexatious, wanton or oppressive purposes, thereby
22 delaying or diverting attention from valid claims or
23 defenses asserted in good faith, the court may order the

24 offending party, or his or her attorney, or both, to pay
25 reasonable attorney's fees and costs to the other party.

§48-5-702. Revision of order enjoining abuse.

1 After entering an order enjoining abuse in accordance
2 with the provisions of section 5-509, the court may, from
3 time to time afterward, upon motion of either of the
4 parties and upon proper service, revise the order and enter
5 a new order concerning the same as the circumstances of
6 the parties and the benefit of children may require.

ARTICLE 7. EQUITABLE DISTRIBUTION OF PROPERTY.

PART 2. DISCLOSURE OF ASSETS REQUIRED.

§48-7-203. Forms for disclosure of assets.

1 The supreme court of appeals shall prepare and make
2 available a standard form for the disclosure of assets and
3 liabilities required by this part. The clerk of the circuit
4 court and the secretary-clerk of the family court shall
5 make these forms available to all parties in any divorce
6 action or other action involving child support. All disclo-
7 sure required by this part shall be on a form that substan-
8 tially complies with the form promulgated by the supreme
9 court of appeals. The form used shall contain a statement
10 in conspicuous print that complete disclosure of assets and
11 liabilities is required by law and deliberate failure to
12 provide complete disclosure as ordered by the court
13 constitutes false swearing.

ARTICLE 8. SPOUSAL SUPPORT.

§48-8-102. Jurisdiction to award spousal support.

1 The family courts and circuit courts, as provided in this
2 chapter, have jurisdiction to award spousal support. A
3 court may provide for the maintenance of a spouse during
4 the pendency of an appeal to the circuit court or to the
5 supreme court of appeals.

§48-8-105. Rehabilitative spousal support.

1 (a) The court may award rehabilitative spousal support
2 for a limited period of time to allow the recipient spouse,
3 through reasonable efforts, to become gainfully employed.
4 When awarding rehabilitative spousal support, the court
5 shall make specific findings of fact to explain the basis for
6 the award, giving due consideration to the factors set forth
7 in section 8-103 of this article. An award of rehabilitative
8 spousal support is appropriate when the dependent spouse
9 evidences a potential for self-support that could be
10 developed through rehabilitation, training or academic
11 study.

12 (b) The court may modify an award of rehabilitative
13 spousal support if a substantial change in the circum-
14 stances under which rehabilitative spousal support was
15 granted warrants terminating, extending or modifying the
16 award or replacing it with an award of permanent spousal
17 support. In determining whether a substantial change of
18 circumstances exists which would warrant a modification
19 of a rehabilitative spousal support award, the court may
20 consider a reassessment of the dependent spouse's poten-
21 tial work skills and the availability of a relevant job
22 market, the dependent spouse's age, health and skills, the
23 dependent spouse's ability or inability to meet the terms of
24 the rehabilitative plan and other relevant factors as
25 provided for in section 8-103 of this article.

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

**PART 1. SCOPE; OBJECTIVES; PARTIES AND
PARENT EDUCATION CLASSES.**

§48-9-104. Parent education classes.

1 (a) The family court shall, by order, and with the
2 approval of the supreme court of appeals, designate an
3 organization or agency to establish and operate education
4 programs designed for parents who have filed an action for
5 divorce, paternity, support, separate maintenance or other
6 custody proceeding and who have minor children. The

7 education programs shall be designed to instruct and
8 educate parents about the effects of divorce and custody
9 disputes on their children and to teach parents ways to
10 help their children and minimize their trauma.

11 (b) The family court shall issue an order requiring
12 parties to an action for divorce involving a minor child or
13 children to attend parent education classes established
14 pursuant to subsection (a) of this section unless the court
15 determines that attendance is not appropriate or neces-
16 sary based on the conduct or circumstances of the parties.
17 The court may, by order, establish sanctions for failure to
18 attend. The court may also order parties to an action
19 involving paternity, separate maintenance or modifica-
20 tion of a divorce decree to attend such classes.

21 (c) The family court may require that each person
22 attending a parent education class pay a fee, not to exceed
23 twenty-five dollars, to the clerk of the circuit court to
24 defray the cost of materials and of hiring teachers:
25 *Provided*, That where it is determined that a party is
26 indigent and unable to pay for such classes, the court shall
27 waive the payment of the fee for such party. The clerk of
28 the circuit court shall, on or before the tenth day of each
29 month, transmit all fees collected under this subsection to
30 the state treasurer for deposit in the state treasury to the
31 credit of special revenue fund to be known as the "parent
32 education fund" which is hereby created. All moneys
33 collected and received under this subsection and paid into
34 the state treasury and credited to the parent education
35 fund shall be used by the administrative office of the
36 supreme court of appeals solely for reimbursing the
37 provider of parent education classes for the costs of
38 materials and of providing such classes. Such moneys
39 shall not be treated by the auditor and treasurer as part of
40 the general revenue of the state.

41 (d) The administrative office of the supreme court of
42 appeals shall submit a report to the joint committee on

43 government and finance summarizing the effectiveness of
44 any program of parent education no later than two years
45 from the initiation of the program.

PART 2. PARENTING PLANS.

§48-9-202. Court-ordered services.

1 (a)(1) The court shall inform the parents, or require them
2 to be informed, about:

3 (A) How to prepare a parenting plan;

4 (B) The impact of family dissolution on children and
5 how the needs of children facing family dissolution can
6 best be addressed;

7 (C) The impact of domestic abuse on children and
8 resources for addressing domestic abuse; and

9 (D) Mediation or other nonjudicial procedures designed
10 to help them achieve an agreement.

11 (2) The court shall require the parents to attend parent
12 education classes.

13 (3) If parents are unable to resolve issues and agree to a
14 parenting plan, the court shall require mediation unless
15 application of the procedural rules promulgated pursuant
16 to the provisions of subsection (b) of this section indicates
17 that mediation is inappropriate in the particular case.

18 (b) The supreme court of appeals shall make and pro-
19 mulgate rules that will provide for premediation screening
20 procedures to determine whether domestic violence, child
21 abuse or neglect, acts or threats of duress or coercion,
22 substance abuse, mental illness or other such elements
23 would adversely affect the safety of a party, the ability of
24 a party to meaningfully participate in the mediation or the
25 capacity of a party to freely and voluntarily consent to any
26 proposed agreement reached as a result of the mediation.
27 Such rules shall authorize a family court judge to consider
28 alternatives to mediation which may aid the parties in

29 establishing a parenting plan. Such rules shall not estab-
30 lish a per se bar to mediation if domestic violence, child
31 abuse or neglect, acts or threats of duress or coercion,
32 substance abuse, mental illness or other such elements
33 exist, but may be the basis for the court, in its discretion,
34 not to order services under subsection (a) of this section or
35 not to require a parent to have face-to-face meetings with
36 the other parent.

37 (c) A mediator shall not make a recommendation to the
38 court and may not reveal information that either parent
39 has disclosed during mediation under a reasonable expect-
40 ation of confidentiality, except that a mediator may
41 reveal to the court credible information that he or she has
42 received concerning domestic violence or child abuse.

43 (d) Mediation services authorized under subsection (a) of
44 this section shall be ordered at an hourly cost that is
45 reasonable in light of the financial circumstances of each
46 parent, assessed on a uniform sliding scale. Where one
47 parent's ability to pay for such services is significantly
48 greater than the other, the court may order that parent to
49 pay some or all of the expenses of the other. State revenues
50 shall not be used to defray the costs for the services of a
51 mediator: *Provided*, That the supreme court of appeals
52 may use a portion of its budget to pay administrative costs
53 associated with establishing and operating mediation
54 programs: *Provided, however*, That grants and gifts to the
55 state that may be used to fund mediation are not to be
56 considered as state revenues for purposes of this subsec-
57 tion.

58 (e) The supreme court of appeals shall establish stan-
59 dards for the qualification and training of mediators.

PART 4. MODIFICATION OF PARENTING PLAN.

§48-9-403. Relocation of a parent.

1 (a) The relocation of a parent constitutes a substantial
2 change in the circumstances under subsection 9-401(a) of
3 the child only when it significantly impairs either parent's

4 ability to exercise responsibilities that the parent has been
5 exercising.

6 (b) Unless otherwise ordered by the court, a parent who
7 has responsibility under a parenting plan who changes, or
8 intends to change, residences for more than ninety days
9 must give a minimum of sixty days' advance notice, or the
10 most notice practicable under the circumstances, to any
11 other parent with responsibility under the same parenting
12 plan. Notice shall include:

13 (1) The relocation date;

14 (2) The address of the intended new residence;

15 (3) The specific reasons for the proposed relocation;

16 (4) A proposal for how custodial responsibility shall be
17 modified, in light of the intended move; and

18 (5) Information for the other parent as to how he or she
19 may respond to the proposed relocation or modification of
20 custodial responsibility.

21 Failure to comply with the notice requirements of this
22 section without good cause may be a factor in the determi-
23 nation of whether the relocation is in good faith under
24 subsection (d) of this section and is a basis for an award of
25 reasonable expenses and reasonable attorney's fees to
26 another parent that are attributable to such failure.

27 The supreme court of appeals shall make available
28 through the offices of the circuit clerks and the secretary-
29 clerks of the family courts a form notice that complies
30 with the provisions of this subsection. The supreme court
31 of appeals shall promulgate procedural rules that provide
32 for an expedited hearing process to resolve issues arising
33 from a relocation or proposed relocation.

34 (c) When changed circumstances are shown under
35 subsection (a) of this section, the court shall, if practical,
36 revise the parenting plan so as to both accommodate the

37 relocation and maintain the same proportion of custodial
38 responsibility being exercised by each of the parents. In
39 making such revision, the court may consider the addi-
40 tional costs that a relocation imposes upon the respective
41 parties for transportation and communication, and may
42 equitably allocate such costs between the parties.

43 (d) When the relocation constituting changed circum-
44 stances under subsection (a) of this section renders it
45 impractical to maintain the same proportion of custodial
46 responsibility as that being exercised by each parent, the
47 court shall modify the parenting plan in accordance with
48 the child's best interests and in accordance with the
49 following principles:

50 (1) A parent who has been exercising a significant
51 majority of the custodial responsibility for the child should
52 be allowed to relocate with the child so long as that parent
53 shows that the relocation is in good faith for a legitimate
54 purpose and to a location that is reasonable in light of the
55 purpose. The percentage of custodial responsibility that
56 constitutes a significant majority of custodial responsibil-
57 ity is seventy percent or more. A relocation is for a
58 legitimate purpose if it is to be close to significant family
59 or other support networks, for significant health reasons,
60 to protect the safety of the child or another member of the
61 child's household from significant risk of harm, to pursue
62 a significant employment or educational opportunity or to
63 be with one's spouse who is established, or who is pursuing
64 a significant employment or educational opportunity, in
65 another location. The relocating parent has the burden of
66 proving of the legitimacy of any other purpose. A move
67 with a legitimate purpose is reasonable unless its purpose
68 is shown to be substantially achievable without moving or
69 by moving to a location that is substantially less disruptive
70 of the other parent's relationship to the child.

71 (2) If a relocation of the parent is in good faith for
72 legitimate purpose and to a location that is reasonable in

73 light of the purpose and if neither has been exercising a
74 significant majority of custodial responsibility for the
75 child, the court shall reallocate custodial responsibility
76 based on the best interest of the child, taking into account
77 all relevant factors including the effects of the relocation
78 on the child.

79 (3) If a parent does not establish that the purpose for
80 that parent's relocation is in good faith for a legitimate
81 purpose into a location that is reasonable in light of the
82 purpose, the court may modify the parenting plan in
83 accordance with the child's best interests and the effects
84 of the relocation on the child. Among the modifications
85 the court may consider is a reallocation of primary custo-
86 dial responsibility, effective if and when the relocation
87 occurs, but such a reallocation shall not be ordered if the
88 relocating parent demonstrates that the child's best
89 interests would be served by the relocation.

90 (4) The court shall attempt to minimize impairment to a
91 parent-child relationship caused by a parent's relocation
92 through alternative arrangements for the exercise of
93 custodial responsibility appropriate to the parents'
94 resources and circumstances and the developmental level
95 of the child.

96 (e) In determining the proportion of caretaking functions
97 each parent previously performed for the child under the
98 parenting plan before relocation, the court may not
99 consider a division of functions arising from any arrange-
100 ments made after a relocation but before a modification
101 hearing on the issues related to relocation.

102 (f) In determining the effect of the relocation or pro-
103 posed relocation on a child, any interviewing or question-
104 ing of the child shall be conducted in accordance with the
105 provisions of rule 17 of the rules of practice and procedure
106 for family law as promulgated by the supreme court of
107 appeals.

PART 6. MISCELLANEOUS PROVISIONS.

§48-9-603. Effect of enactment; operative dates.

1 (a) The enactment of this article, formerly enacted as
2 article eleven of this chapter during the second extraordi-
3 nary session of the Legislature, one thousand nine hundred
4 ninety-nine, is prospective in operation unless otherwise
5 expressly indicated.

6 (b) The provisions of section 9-202, insofar as they
7 provide for parent education and mediation, became
8 operative on the first day of January, two thousand. Until
9 that date, parent education and mediation with regard to
10 custody issues were discretionary unless made mandatory
11 under a particular program or pilot project by rule or
12 direction of the supreme court of appeals or a circuit court.

13 (c) The provisions of this article that authorize the court,
14 in the absence of an agreement of the parents, to order an
15 allocation of custodial responsibility and an allocation of
16 significant decision-making responsibility became opera-
17 tive on the first day of January, two thousand, at which
18 time the primary caretaker doctrine was replaced with a
19 system that allocates custodial and decision-making
20 responsibility to the parents in accordance with this
21 article. Any order entered prior to the first day of Janu-
22 ary, two thousand, based on the primary caretaker doc-
23 trine remains in full force and effect until modified by a
24 court of competent jurisdiction.

ARTICLE 11. SUPPORT OF CHILDREN.**§48-11-105. Modification of child support order.**

1 (a) The court may modify a child support order, for the
2 benefit of the child, when a motion is made that alleges a
3 change in the circumstances of a parent or another proper
4 person or persons. A motion for modification of a child
5 support order may be brought by a custodial parent or any
6 other lawful custodian or guardian of the child, by a

7 parent or other person obligated to pay child support for
8 the child or by the bureau for child support enforcement of
9 the department of health and human resources of this
10 state.

11 (b) The provisions of the order may be modified if there
12 is a substantial change in circumstances. If application of
13 the guideline would result in a new order that is more than
14 fifteen percent different, then the circumstances are
15 considered a substantial change.

16 (c) An order that modifies the amount of child support
17 to be paid shall conform to the support guidelines set forth
18 in article 13-101, *et seq.*, of this chapter unless the court
19 disregards the guidelines or adjusts the award as provided
20 for in section 13-702.

21 (d) The supreme court of appeals shall make available to
22 the courts a standard form for a petition for modification
23 of an order for support, which form will allege that the
24 existing order should be altered or revised because of a
25 loss or change of employment or other substantial change
26 affecting income or that the amount of support required to
27 be paid is not within fifteen percent of the child support
28 guidelines. The clerk of the circuit court and the
29 secretary-clerk of the family court shall make the forms
30 available to persons desiring to represent themselves in
31 filing a motion for modification of the support award.

§48-11-106. Expedited process for modification.

1 (a) An expedited process for modification of a child
2 support order may be utilized if:

3 (1) Either parent experiences a substantial change of
4 circumstances resulting in a decrease in income due to loss
5 of employment or other involuntary cause;

6 (2) An increase in income due to promotion, change in
7 employment or reemployment; or

8 (3) Other such change in employment status.

9 (b) The party seeking the recalculation of support and
10 modification of the support order shall file a description of
11 the decrease or increase in income and an explanation of
12 the cause of the decrease or increase on a standardized
13 form to be provided by the secretary-clerk or other
14 employee of the family court. The standardized form shall
15 be verified by the filing party. Any available documentary
16 evidence shall be filed with the standardized form. Based
17 upon the filing and information available in the case
18 record, the amount of support shall be tentatively recalcu-
19 lated.

20 (c) The secretary-clerk shall serve a notice of the filing,
21 a copy of the standardized form and the support calcula-
22 tions upon the other party by certified mail, return receipt
23 requested, with delivery restricted to the addressee, in
24 accordance with rule 4(d)(1)(D) of the West Virginia rules
25 of civil procedure. The secretary-clerk shall also mail a
26 copy, by first-class mail, to the local office of the bureau
27 for child support enforcement for the county in which the
28 family court is located in the same manner as original
29 process under rule 4(d) of the rules of civil procedure.

30 (d) The notice shall fix a date fourteen days from the
31 date of mailing and inform the party that unless the
32 recalculation is contested and a hearing request is made on
33 or before the date fixed, the proposed modification will be
34 made effective. If the filing is contested, the proposed
35 modification shall be set for hearing; otherwise, the court
36 shall enter an order for a judgment by default. Either
37 party may move to set aside a judgment by default,
38 pursuant to the provisions of rule 55 or rule 60(b) of the
39 rules of civil procedure.

40 (e) If an obligor uses the provisions of this section to
41 expeditiously reduce his or her child support obligation,
42 the order that effected the reduction shall also require the
43 obligor to notify the obligee of reemployment, new em-
44 ployment or other such change in employment status that
45 results in an increase in income. If an obligee uses the

46 provisions of this section to expeditiously increase his or
 47 her child support obligation, the order that effected the
 48 increase shall also require the obligee to notify the obligor
 49 of reemployment, new employment or other such change
 50 in employment status that results in an increase in income
 51 of the obligee.

52 (f) The supreme court of appeals shall develop the
 53 standardized form required by this section.

ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS.

PART 1. GENERAL PROVISIONS.

§48-13-101. Guidelines to ensure uniformity and increase predictability; presumption of correctness.

1 This article establishes guidelines for child support
 2 award amounts so as to ensure greater uniformity by those
 3 persons who make child support recommendations and
 4 enter child support orders and to increase predictability
 5 for parents, children and other persons who are directly
 6 affected by child support orders. There is a rebuttable
 7 presumption, in any proceeding before a court for the
 8 award of child support, that the amount of the award
 9 which would result from the application of these guide-
 10 lines is the correct amount of child support to be awarded.

PART 2. CALCULATION OF CHILD SUPPORT ORDER.

§48-13-202. Application of expenses and credits in determining child support.

1 In determining the total child support obligation, the
 2 court shall:

3 (1) Add to the basic child support obligation any
 4 unreimbursed child health care expenses, work-related
 5 child care expenses and any other extraordinary expenses
 6 agreed to by the parents or ordered by the court; and

7 (2) Subtract any extraordinary credits agreed to by the
 8 parents or ordered by the court.

§48-13-204. Use of worksheets.

1 The calculation of the amount awarded by the support
2 order requires the use of one of two worksheets which
3 must be completed for each case. Worksheet A is used for
4 a basic shared parenting arrangement. Worksheet B is
5 used for an extended shared parenting arrangement.

§48-13-205. Present income as monthly amounts.

1 To the extent practicable, all information relating to
2 income shall be presented to the court based on monthly
3 amounts. For example, when a party is paid wages
4 weekly, the pay should be multiplied by fifty-two and
5 divided by twelve to arrive at a correct monthly amount.
6 If the court deems appropriate, such information may be
7 presented in such other forms as the court directs.

PART 7. APPLICATION OF CHILD SUPPORT GUIDELINES.

§48-13-701. Rebuttable presumption that child support award is correct.

1 The guidelines in child support awards apply as a
2 rebuttable presumption to all child support orders estab-
3 lished or modified in West Virginia. The guidelines must
4 be applied to all actions in which child support is being
5 determined including temporary orders, interstate
6 (URESA and UIFSA), domestic violence, foster care,
7 divorce, nondissolution, public assistance, nonpublic
8 assistance and support decrees arising despite
9 nonmarriage of the parties. The guidelines must be used
10 by the court as the basis for reviewing adequacy of child
11 support levels in uncontested cases as well as contested
12 hearings.

PART 9. MISCELLANEOUS PROVISIONS RELATING
TO CHILD SUPPORT ORDERS.

§48-13-901. Tax exemption for child due support.

1 Unless otherwise agreed to by the parties, the court shall
2 allocate the right to claim dependent children for income

3 tax purposes to the payee parent except in cases of ex-
4 tended shared parenting. In extended shared parenting
5 cases, these rights shall be allocated between the parties in
6 proportion to their adjusted gross incomes for child
7 support calculations. In a situation where allocation
8 would be of no tax benefit to a party, the court need make
9 no allocation to that party. However, the tax exemptions
10 for the minor child or children should be granted to the
11 payor parent only if the total of the payee parent's income
12 and child support is greater when the exemption is
13 awarded to the payor parent.

§48-13-902. Investment of child support.

1 (a) The court has the discretion, in appropriate cases, to
2 direct that a portion of child support be placed in trust
3 and invested for future educational or other needs of the
4 child. The court may order such investment when all of
5 the child's day-to-day needs are being met such that, with
6 due consideration of the age of the child, the child is living
7 as well as his or her parents.

8 (b) If the amount of child support ordered per child
9 exceeds the sum of two thousand dollars per month, the
10 court is required to make a finding, in writing, as to
11 whether investments shall be made as provided for in
12 subsection (a) of this section.

13 (c) A trustee named by the court shall use the judgment
14 and care under the circumstances then prevailing that
15 persons of prudence, discretion and intelligence exercise
16 in the management of their own affairs, not in regard to
17 speculation but in regard to the permanent disposition of
18 their funds, considering the probable income as well as the
19 probable safety of their capital. A trustee shall be gov-
20 erned by the provisions of the uniform prudent investor
21 act as set forth in article six-c, chapter forty-four of this
22 code. The court may prescribe the powers of the trustee
23 and provide for the management and control of the trust.
24 Upon petition of a party or the child's guardian or next

25 friend and upon a showing of good cause, the court may
26 order the release of funds in the trust from time to time.

**ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGA-
TIONS.**

**PART 1. ACTION TO OBTAIN AN ORDER FOR
SUPPORT OF MINOR CHILD.**

**§48-14-101. When action may be brought for child support
order.**

- 1 An action may be brought in family court to obtain an
2 order for the support of a minor child when:
- 3 (1) The child has a parent and child relationship with an
4 obligor;
- 5 (2) The obligor is not meeting an obligation to support
6 the child;
- 7 (3) An enforceable order for the support of the child by
8 the obligor has not been entered by a court of competent
9 jurisdiction; and
- 10 (4) There is no pending action for divorce, separate
11 maintenance or annulment in which the obligation of
12 support owing from the obligor to the child is at issue.

§48-14-106. Modification of support order.

- 1 (a) At any time after the entry of an order for support,
2 the court may, upon the verified petition of an obligee or
3 the obligor, revise or alter such order and make a new
4 order as the altered circumstances or needs of a child, an
5 obligee or the obligor may render necessary to meet the
6 ends of justice.
- 7 (b) The supreme court of appeals shall make available to
8 the family courts a standard form for a petition for
9 modification of an order for support, which form will
10 allege that the existing order should be altered or revised
11 because of a loss or change of employment or other

12 substantial change affecting income, or that the amount of
13 support required to be paid is not within fifteen percent of
14 the child support guidelines. The clerk of the circuit court
15 and the secretary-clerk of the family court shall make such
16 forms available to persons desiring to petition the court
17 pro se for a modification of the support award.

PART 2. LIENS AGAINST PERSONAL
PROPERTY FOR OVERDUE SUPPORT.

§48-14-204. Execution and notice.

1 (a) Upon receipt of the affidavit, the clerk shall issue a
2 writ of execution, suggestion or suggestee execution and
3 shall mail a copy of the affidavit and a notice of the filing
4 of the affidavit to the obligor at his or her last known
5 address. If the bureau for child support enforcement is not
6 acting on behalf of the obligee in filing the affidavit, the
7 clerk shall forward a copy of the affidavit and the notice
8 of the filing to the bureau for child support enforcement.

9 (b) The notice provided for in subsection (a) of this
10 section must inform the obligor that if he or she desires to
11 contest the affidavit on the grounds that the amount
12 claimed to be in arrears is incorrect or that a writ of
13 execution, suggestion or suggestee execution is not proper
14 because of mistakes of fact, he or she must, within four-
15 teen days of the date of the notice: (1) Inform the bureau
16 for child support enforcement in writing of the reasons
17 why the affidavit is contested and request a meeting with
18 the bureau for child support enforcement; or (2) where a
19 court of this state has jurisdiction over the parties, obtain
20 a date for a hearing before the court and mail written
21 notice of such hearing to the obligee and to the bureau for
22 child support enforcement on a form prescribed by the
23 administrative office of the supreme court of appeals and
24 made available through the office of the clerk of the
25 circuit court.

26 (c) Upon being informed by an obligor that he or she
27 desires to contest the affidavit, the bureau for child

28 support enforcement shall inform the court of such fact,
29 and the court shall require the obligor to give security,
30 post a bond or give some other guarantee to secure pay-
31 ment of overdue support.

PART 4. WITHHOLDING FROM INCOME OF
AMOUNTS PAYABLE AS SUPPORT.

**§48-14-402. Commencement of withholding from income with-
out further court action.**

1 (a) Except as otherwise provided in section 14-403, a
2 support order as described in section 14-401 must contain
3 or must be deemed to contain language requiring auto-
4 matic income withholding for both current support and for
5 any arrearages to commence without further court action
6 on the date the support order is entered.

7 (b) The supreme court of appeals shall make available to
8 the family courts standard language to be included in all
9 such orders, so as to conform such orders to the applicable
10 requirements of state and federal law regarding the
11 withholding from income of amounts payable as support.

§48-14-405. Information required in notice to obligor.

1 When income withholding is required, the bureau for
2 child support enforcement shall send by first class mail or
3 electronic means to the obligor notice that withholding has
4 commenced. The notice shall inform the obligor of the
5 following:

6 (1) The amount owed;

7 (2) That a withholding from the obligor's income of
8 amounts payable as support has commenced;

9 (3) That the amount withheld will be equal to the
10 amount required under the terms of the current support
11 order, plus amounts for any outstanding arrearage;

12 (4) The definition of "gross income" as defined in section
13 1-228 of this chapter;

14 (5) That the withholding will apply to the obligor's
15 present source of income and to any future source of
16 income and, therefore, no other notice of withholding will
17 be sent to the obligor. A copy of any new or modified
18 withholding notice will be sent to the obligor at approxi-
19 mately the same time the original is sent to the source of
20 income;

21 (6) That any action by the obligor to purposefully
22 minimize his or her income will result in the enforcement
23 of support being based upon potential and not just actual
24 earnings;

25 (7) That payment of the arrearage after the date of the
26 notice is not a bar to such withholding;

27 (8) That the obligor may request a review of the with-
28 holding by written request to the bureau for child support
29 enforcement when the obligor has information showing an
30 error in the current or overdue support amount or a
31 mistake as to the identity of the obligor;

32 (9) That a mistake of fact exists only when there is an
33 error in the amount of current or overdue support claimed
34 in the notice or there is a mistake as to the identity of the
35 obligor;

36 (10) That matters such as lack of visitation, inappropri-
37 ateness of the support award or changed financial circum-
38 stances of the obligee or the obligor will not be considered
39 at any hearing held pursuant to the withholding, but may
40 be raised by the filing of a separate petition in family
41 court;

42 (11) That if the obligor desires to contest the withhold-
43 ing, the obligor may petition the family court for a resolu-
44 tion; and

45 (12) That while the withholding is being contested
46 through the court, the income withholding may not be
47 stayed but may be modified.

PART 5. ENFORCEMENT OF SUPPORT ORDERS
BY CONTEMPT PROCEEDINGS.

§48-14-501. Commencement of contempt action.

1 In addition to or in lieu of the other remedies provided
2 by this article for the enforcement of support orders, the
3 bureau for child support enforcement may commence a
4 civil or criminal contempt proceeding in accordance with
5 the provisions of section 1-304 against an obligor who is
6 alleged to have willfully failed or refused to comply with
7 the order of a court of competent jurisdiction requiring the
8 payment of support. Such proceeding shall be instituted
9 by filing a petition for an order to show cause why the
10 obligor should not be held in contempt.

PART 8. INCREASE IN PAYMENTS TO SATISFY ARREARAGE.

**§48-14-802. Notice of increase in monthly payments to satisfy
overdue support.**

1 Notice of the increase shall be sent to the obligor at the
2 time such increase is implemented. If the obligor disagrees
3 with the increase in payments, he or she may file, within
4 thirty days of the date of the notice, a motion with the
5 court for a determination of whether there should be an
6 increase in monthly payments and the amount of that
7 increase, if any.

**ARTICLE 15. ENFORCEMENT OF SUPPORT ORDER THROUGH ACTION
AGAINST LICENSE.**

PART 2. ACTION AGAINST LICENSE.

§48-15-205. Form of notice of action against a license.

1 The notice shall be substantially in the following form:

NOTICE OF ACTION AGAINST LICENSE		
Name and address:	Date:	Case No:
	Social Security No:	
	Family Court of County, West Virginia	
Section 1.		
<input type="checkbox"/> The Bureau for Child Support Enforcement has determined that you have failed to comply with an order to pay child support and that the amount you owe equals six months child support or more. The amount you owe is calculated to be \$_____ as of the _____ day of _____, _____.		
<input type="checkbox"/> The Bureau for Child Support Enforcement has determined that you have failed to comply with a medical support order for a period of six months. The amount you owe is calculated to be \$_____ as of the _____ day of _____, _____.		
<input type="checkbox"/> The Bureau for Child Support Enforcement has determined that you have failed to comply with a medical support order requiring you to obtain health insurance for your child or children.		
<input type="checkbox"/> The Bureau for Child Support Enforcement has determined that you have failed to comply with a subpoena or warrant relating to a paternity or child support proceeding.		

Section 2.

Under West Virginia law, your failure to comply as described in Section 1 may result in an action against certain licenses issued to you by the State of West Virginia. Action may be taken against a driver's license, a recreational license such as a hunting and fishing license and a professional or occupational license necessary for you to work. An application for a license may be denied. A renewal of a license may be refused. A license which you currently hold may be suspended or restricted in its use.

The Bureau for Child Support Enforcement has determined that you are a current license holder, have applied for or are likely to apply for the following license or licenses:

To avoid an action against your licenses, check which of the following actions you will take:

- I want to pay in full the overdue amount I owe as child support. I am enclosing a check or money order in the amount of \$ _____
- I want pay in full the amount I owe as medical support. I am enclosing a check or money order in the amount of \$ _____
- I am requesting a meeting with a representative of the Bureau for Child Support Enforcement to arrange a payment plan that will allow me to make my current payments as they become due and to pay on the arrearage I owe or to otherwise bring me into compliance with current support orders.
- I am requesting a hearing before the family court judge to contest an action against my licenses. Please serve me with any petition filed, and provide me with notice of the time and place of the hearing.

Signed ✱ _____ Date: _____

Section 3.

You must check the appropriate box or boxes in Section 2, sign your name and mail this form to the Bureau for Child Support Enforcement before the _____ day of _____, _____. Otherwise, the Bureau for Child Support Enforcement may begin an action against your licenses in the Family Court without further notice to you. Mail this form to the following address:

§48-15-207. Failure to act in response to notice; entry of order.

1 If the person fails to take one of the actions described in
2 section 15-206 within thirty days of the date of the notice
3 and there is proof that service on the person was effective,
4 the bureau for child support enforcement shall file a
5 certification with the court setting forth the person's
6 noncompliance with the support order or failure to comply
7 with a subpoena or warrant and the person's failure to
8 respond to the written notice of the potential action
9 against his or her license. If the court is satisfied that
10 service of the notice on the person was effective as set
11 forth in this section, it shall, without need for further due
12 process or hearing, enter an order suspending or restricting
13 any licenses held by the person. Upon the entry of the
14 order, the bureau for child support enforcement shall
15 forward a copy to the person and to any appropriate
16 agencies responsible for the issuance of a license.

§48-15-208. Request and petition for hearing.

1 If the person requests a hearing, the bureau for child
2 support enforcement shall file a petition for a hearing
3 before the family court. The hearing shall occur within
4 forty-two days of the receipt of the person's request. If,
5 prior to the hearing, the person pays the full amount of the
6 child support arrearage or medical support arrearage or
7 provides health insurance as ordered, the action against a

8 license shall be terminated. No action against a license
9 shall be initiated if the bureau for child support enforce-
10 ment has received notice that the person has pending a
11 motion to modify the child support order if that motion
12 was filed prior to the date that the notice of the action
13 against the license was sent by the bureau for child
14 support enforcement. The court shall consider the bureau
15 for child support enforcement's petition to deny, refuse to
16 renew, suspend or restrict a license in accordance with
17 section 15-209.

ARTICLE 16. UNIFORM INTERSTATE FAMILY SUPPORT ACT.

PART 1. GENERAL PROVISIONS.

§48-16-101. Definitions.

1 As used in this article:

2 (1) "Child" means an individual, whether over or under
3 the age of majority, who is or is alleged to be owed a duty
4 of support by the individual's parent or who is or is alleged
5 to be the beneficiary of a support order directed to the
6 parent.

7 (2) "Child support order" means a support order for a
8 child, including a child who has attained the age of
9 majority under the law of the issuing state.

10 (3) "Duty of support" means an obligation imposed or
11 imposable by law to provide support for a child, spouse or
12 former spouse, including an unsatisfied obligation to
13 provide support.

14 (4) "Home state" means the state in which a child lived
15 with a parent or a person acting as parent for at least six
16 consecutive months immediately preceding the time of
17 filing of a petition or comparable pleading for support and,
18 if a child is less than six months old, the state in which the
19 child lived from birth with any of them. A period of

20 temporary absence of any of them is counted as part of the
21 six-month or other period.

22 (5) "Income" includes earnings or other periodic
23 entitlements to money from any source and any other
24 property subject to withholding for support under the law
25 of this state.

26 (6) "Income-withholding order" means an order or other
27 legal process directed to an obligor's source of income as
28 defined by section 1-240 of this chapter to withhold
29 support from the income of the obligor.

30 (7) "Initiating state" means a state from which a pro-
31 ceeding is forwarded or in which a proceeding is filed for
32 forwarding to a responding state under this article or a law
33 or procedure substantially similar to this article, the
34 uniform reciprocal enforcement of support act or the
35 revised uniform reciprocal enforcement of support act.

36 (8) "Initiating tribunal" means the authorized tribunal
37 in an initiating state.

38 (9) "Issuing state" means the state in which a tribunal
39 issues a support order or renders a judgment determining
40 parentage.

41 (10) "Issuing tribunal" means the tribunal that issues a
42 support order or renders a judgment determining parent-
43 age.

44 (11) "Law" includes decisional and statutory law and
45 rules having the force of law.

46 (12) "Obligee" means: (i) An individual to whom a duty
47 of support is or is alleged to be owed or in whose favor a
48 support order has been issued or a judgment determining
49 parentage has been rendered; (ii) a state or political
50 subdivision to which the rights under a duty of support or
51 support order have been assigned or which has independ-
52 ent claims based on financial assistance provided to an

53 individual obligee; or (iii) an individual seeking a judg-
54 ment determining parentage of the individual's child.

55 (13) "Obligor" means an individual or the estate of a
56 decedent: (i) Who owes or is alleged to owe a duty of
57 support; (ii) who is alleged but has not been adjudicated to
58 be a parent of a child; or (iii) who is liable under a support
59 order.

60 (14) "Register" means to record a support order or
61 judgment determining parentage in the registry of foreign
62 support orders.

63 (15) "Registering tribunal" means a tribunal in which a
64 support order is registered.

65 (16) "Responding state" means a state in which a pro-
66 ceeding is filed or to which a proceeding is forwarded for
67 filing from an initiating state under this article or a law or
68 procedure substantially similar to this article, the uniform
69 reciprocal enforcement of support act or the revised
70 uniform reciprocal enforcement of support act.

71 (17) "Responding tribunal" means the authorized
72 tribunal in a responding state.

73 (18) "Spousal-support order" means a support order for
74 a spouse or former spouse of the obligor.

75 (19) "State" means a state of the United States, the
76 District of Columbia, Puerto Rico, the United States Virgin
77 Islands or any territory or insular possession subject to the
78 jurisdiction of the United States. The term includes: (i) An
79 Indian tribe; or (ii) a foreign jurisdiction that has enacted
80 a law or established procedures for issuance and enforce-
81 ment of support orders which are substantially similar to
82 the procedures under this article, the uniform reciprocal
83 enforcement of support act or the revised uniform recipro-
84 cal of enforcement of support act.

85 (20) "Support enforcement agency" means a public
86 official or agency authorized to seek: (i) Enforcement of
87 support orders or laws relating to the duty of support; (ii)
88 establishment or modification of child support; (iii)
89 determination of parentage; or (iv) to locate obligors or
90 their assets.

91 (21) "Support order" means a judgment, decree or order,
92 whether temporary, final or subject to modification, for
93 the benefit of a child, a spouse or a former spouse which
94 provides for monetary support, health care, arrearages or
95 reimbursement and may include related costs and fees,
96 interest, income withholding, attorney's fees and other
97 relief.

98 (22) "Tribunal" means a court, administrative agency or
99 quasi-judicial entity authorized to establish, enforce or
100 modify support orders or to determine parentage.

§48-16-102. Tribunals of state.

1 The family court is the tribunal of this state.

PART 3. CIVIL PROCEDURES OF GENERAL APPLICATION.

§48-16-305. Duties and powers of responding tribunal.

1 (a) When a responding tribunal of this state receives a
2 petition or comparable pleading from an initiating tribu-
3 nal or directly pursuant to subsection (c), section 16-301
4 (proceedings under this article), the clerk of the court shall
5 cause the petition or pleading to be filed and notify the
6 petitioner where and when it was filed.

7 (b) A responding tribunal of this state, to the extent
8 otherwise authorized by law, may do one or more of the
9 following: (1) Issue or enforce a support order, modify a
10 child support order or render a judgment to determine
11 parentage; (2) order an obligor to comply with a support
12 order, specifying the amount and the manner of compli-
13 ance; (3) order income withholding; (4) determine the

14 amount of any arrearages and specify a method of pay-
15 ment; (5) enforce orders by civil contempt; (6) set aside
16 property for satisfaction of the support order; (7) place
17 liens and order execution on the obligor's property; (8)
18 order an obligor to keep the tribunal informed of the
19 obligor's current residential address, telephone number,
20 employer, address of employment and telephone number
21 at the place of employment; (9) issue a *capias* for an
22 obligor who has failed after proper notice to appear at a
23 hearing ordered by the tribunal and enter the *capias* in any
24 local and state computer systems for criminal warrants;
25 (10) order the obligor to seek appropriate employment by
26 specified methods; (11) award reasonable attorney's fees
27 and other fees and costs; and (12) grant any other available
28 remedy.

29 (c) A responding tribunal of this state shall include in a
30 support order issued under this article, or in the documents
31 accompanying the order, the calculations on which the
32 support order is based.

33 (d) A responding tribunal of this state may not condition
34 the payment of a support order issued under this article
35 upon compliance by a party with provisions for visitation.

36 (e) If a responding tribunal of this state issues an order
37 under this article, the tribunal shall send a copy of the
38 order to the petitioner and the respondent and to the
39 initiating tribunal, if any.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-108. Fees.

1 (a) When the bureau for child support enforcement
2 provides child support collection services either to a public
3 assistance recipient or to a party who does not receive
4 public assistance, the bureau for child support enforce-
5 ment shall, upon written notice to the obligor, charge a
6 monthly collection fee equivalent to the full monthly cost

7 of the services, in addition to the amount of child support
8 which was ordered by the court. The fee shall be deposited
9 in the child support enforcement fund. The service fee
10 assessed may not exceed ten percent of the monthly court
11 ordered child support and may not be assessed against any
12 obligor who is current in payment of the monthly court
13 ordered child support payments: *Provided*, That this fee
14 may not be assessed when the obligor is also a recipient of
15 public assistance.

16 (b) Except for those persons applying for services
17 provided by the bureau for child support enforcement who
18 are applying for or receiving public assistance from the
19 division of human services or persons for whom fees are
20 waived pursuant to a legislative rule promulgated pursu-
21 ant to this section, all applicants shall pay an application
22 fee of twenty-five dollars.

23 (c) Fees imposed by state and federal tax agencies for
24 collection of overdue support shall be imposed on the
25 person for whom these services are provided. Upon
26 written notice to the obligee the bureau for child support
27 enforcement shall assess a fee of twenty-five dollars to any
28 person not receiving public assistance for each successful
29 federal tax interception. The fee shall be withheld prior to
30 the assistance for each successful federal tax interception.
31 The fee shall be withheld prior to the release of the funds
32 received from each interception and deposited in the child
33 support enforcement fund established pursuant to section
34 18-107.

35 (d) In any action brought by the bureau for child support
36 enforcement, the court shall order that the obligor shall
37 pay attorney fees for the services of the attorney represent-
38 ing the bureau for child support enforcement in an amount
39 calculated at a rate similar to the rate paid to court
40 appointed attorneys paid pursuant to section thirteen-a,
41 article twenty-one, chapter twenty-nine of this code and
42 all court costs associated with the action: *Provided*, That

43 no such award shall be made when the court finds that the
44 award of attorney's fees would create a substantial
45 financial hardship on the obligor or when the obligor is a
46 recipient of public assistance. Further, the bureau for
47 child support enforcement may not collect such fees until
48 the obligor is current in the payment of child support. No
49 court may order the bureau for child support enforcement
50 to pay attorney's fees to any party in any action brought
51 pursuant to this chapter.

52 (e) This section shall not apply to the extent it is incon-
53 sistent with the requirements of federal law for receiving
54 funds for the program under Title IV-A and Title IV-D of
55 the Social Security Act, United States Code, article three,
56 Title 42, Sections 601 to 613 and United States Code, Title
57 42, Sections 651 to 662.

58 (f) The commission shall, by legislative rule promulgated
59 pursuant to chapter twenty-nine-a of this code, describe
60 the circumstances under which fees charged by the bureau
61 for child support enforcement may be modified or waived
62 and such rule shall provide for the waiver of any fee, in
63 whole or in part, when such fee would otherwise be
64 required to be paid under the provisions of this chapter.
65 Further, such rule shall initially be promulgated as an
66 emergency rule pursuant to section fifteen, article three,
67 chapter twenty-nine-a of this code.

§48-18-111. Establishment of parent locator service.

1 (a) The bureau for child support enforcement shall
2 establish a parent locator service to locate individuals for
3 the purposes of establishing parentage and of establishing,
4 modifying or enforcing child support obligations, utilizing
5 all sources of information and available records and the
6 parent locator service in the federal department of health
7 and human services. For purposes of obtaining informa-
8 tion from the parent locator service, any person, agency or
9 entity providing services to the bureau for child support
10 enforcement pursuant to a contract that includes a provi-

11 sion to ensure that the confidentiality of information is
12 maintained shall be deemed to be an agent of the bureau
13 for child support enforcement.

14 (b) Upon entering into an agreement with the secretary
15 of the federal department of health and human services for
16 the use of that department's parent locator service, the
17 bureau for child support enforcement shall accept and
18 transmit to the secretary of the federal department of
19 health and human services requests from authorized
20 persons for information with regard to the whereabouts of
21 a noncustodial obligor to be furnished by such federal
22 parent locator service. For purposes of this subsection,
23 "authorized persons" means: (1) An attorney or agent of
24 the bureau for child support enforcement; (2) a family or
25 circuit court judge or any agent thereof; or (3) a resident
26 parent, legal guardian, attorney or agent for a child. The
27 bureau for child support enforcement shall charge a
28 reasonable fee sufficient to cover the costs to the state and
29 to the federal department of health and human services
30 incurred by reason of such requests and shall transfer to
31 that department, from time to time, so much of the fees
32 collected as are attributable to the costs incurred by that
33 department.

34 (c) The information obtained by the bureau for child
35 support enforcement from the federal parent locator
36 service shall be used for, but not limited to, the following
37 purposes:

38 (1) Establishing parentage and establishing, setting the
39 amount of, modifying or enforcing child support obliga-
40 tions;

41 (2) Obtaining and transmitting information to any family
42 or circuit court or agent thereof or to an attorney or
43 employee of the United States or of any state responsible
44 for enforcing any federal or state law with respect to the
45 unlawful taking or restraint of a child or making or
46 enforcing a child custody or visitation determination.

47 (d) The bureau for child support enforcement may
48 request from the federal parent locator service informa-
49 tion:

50 (1) About, or which will facilitate the discovery of
51 information about, the location of any individual: (A) Who
52 is under an obligation to pay child support; (B) against
53 whom such an obligation is sought; or (C) to whom such an
54 obligation is owed, including the individual's social
55 security number, or numbers, most recent address and the
56 name, address and employer identification number of the
57 individual's employer;

58 (2) Concerning the individual's wages or other income
59 from, and benefits of, employment, including rights to or
60 enrollment in group health care coverage; and

61 (3) Concerning the type, status, location and amount of
62 any assets of, or debts owed by or to, any such individual.

63 (e) The family court shall have jurisdiction to hear and
64 determine, upon a petition by an authorized person as
65 defined in subsection (b) of this section, whether the
66 release of information from the federal parent locator
67 service to that person could be harmful to the custodial
68 parent or the child.

**§48-18-114. Amounts collected as support to be disbursed to
person having custody; procedure for redirect-
ing disbursement of payments where physical
custody transferred to a person other than the
custodial parent.**

1 (a) Where physical custody of the child has been trans-
2 ferred from the custodial parent to another person, the
3 bureau for child support enforcement may redirect dis-
4 bursement of support payments to such other person, on
5 behalf of the child, in the following circumstances:

6 (1) Where the noncustodial parent has physical custody
7 of the child, excluding visitation, upon filing with the
8 bureau for child support enforcement:

9 (A) An affidavit attesting that the noncustodial parent
10 has obtained physical custody of the child, describing the
11 circumstances under which the transfer of physical
12 custody took place and stating that he or she anticipates
13 that his or her physical custody of the child will continue
14 for the foreseeable future; and

15 (B) Documentary proof that the noncustodial parent has
16 instituted proceedings in court for a modification of legal
17 custody or a certified copy of the custodial parent's death
18 certificate.

19 (2) Where a person other than the custodial or
20 noncustodial parent has physical custody of the child,
21 excluding visitation, filing with the bureau for child
22 support enforcement:

23 (A) An affidavit attesting that the person has obtained
24 physical custody of the child, describing the circumstances
25 under which the transfer of physical custody took place
26 and stating that he or she anticipates that his or her
27 physical custody of the child will continue for the foresee-
28 able future; and

29 (B) Documentary proof that the person claiming physi-
30 cal custody is currently the person responsible for the child
31 by producing at least one of the following:

32 (i) School records demonstrating that school authorities
33 consider the person claiming physical custody the adult
34 responsible for the child;

35 (ii) Medical records demonstrating that the person
36 claiming physical custody is empowered to make medical
37 decisions on behalf of the child;

38 (iii) Documents from another public assistance agency
39 showing that the person claiming physical custody is
40 currently receiving other public assistance on behalf of the
41 child;

42 (iv) A notarized statement from the custodial parent
43 attesting to the fact that he or she has transferred physical
44 custody to the person;

45 (v) A verifiable order of a court of competent jurisdiction
46 transferring physical or legal custody to the person;

47 (vi) Documentation that the person claiming physical
48 custody has filed a petition in court to be appointed the
49 child's guardian;

50 (vii) Documentation that the child, if over the age of
51 fourteen, has instituted proceedings in court to have the
52 person claiming physical custody nominated as his or her
53 guardian; or

54 (viii) Any other official documents of a federal, state or
55 local agency or governing body demonstrating that the
56 person currently has physical custody of the child and has
57 taken action indicating that he or she anticipates such
58 physical custody to continue in the foreseeable future.

59 (b) The bureau for child support enforcement shall mail,
60 by first-class mail, a copy of the affidavit and supporting
61 documentary evidence required under subsection (a) of this
62 section to the circuit court which issued the support order
63 being enforced by and to the parties to the order, at their
64 last known addresses, together with a written notice
65 stating that any party has ten days to object to the redirec-
66 tion of support payments by filing an affidavit and evi-
67 dence showing that the person seeking redirection of the
68 payments does not have physical custody of the child. If
69 no objection is received by the bureau for child support
70 enforcement by the end of the ten-day period, the bureau
71 may order payments redirected to the person claiming
72 physical custody for the benefit of the child. If a respon-
73 sive affidavit and supporting evidence is filed within the
74 ten-day period and, in the opinion of the bureau for child
75 support enforcement, either disproves the claim of the
76 person seeking redirection of support payments or raises a

77 genuine issue of fact as to whether the person has actual
78 physical custody of the child, the bureau for child support
79 enforcement shall continue to forward support payments
80 to the custodial parent. Any person who disagrees with
81 the determination of the bureau for child support enforce-
82 ment may petition the court for modification of the child
83 support order.

84 (c) Any person who files a false affidavit pursuant to this
85 section shall be guilty of false swearing and, upon convic-
86 tion thereof, shall be punished as provided by law for such
87 offense.

§48-18-123. Subpoenas.

1 In order to obtain financial and medical insurance or
2 other information pursuant to the establishment, enforce-
3 ment and modification provisions set forth in this chapter,
4 the bureau for child support enforcement or any out-of-
5 state agency administering a program under Title IV-D of
6 the Social Security Act may serve, by certified mail or
7 personal service, an administrative subpoena on any
8 person, corporation, partnership, financial institution,
9 labor organization or state agency for an appearance or for
10 production of financial or medical insurance or other
11 information. In case of disobedience to the subpoena, the
12 bureau for child support enforcement may invoke the aid
13 of any family court in requiring the appearance or produc-
14 tion of records and financial documents. The bureau for
15 child support enforcement may assess a civil penalty of no
16 more than one hundred dollars for the failure of any
17 person, corporation, financial institution, labor organiza-
18 tion or state agency to comply with requirements of this
19 section.

§48-18-126. Review and adjustment of child support orders.

1 (a) Either parent or, if there has been an assignment of
2 support to the department of health and human resources,

3 the bureau for child support enforcement shall have the
4 right to request an administrative review of the child
5 support award in the following circumstances:

6 (1) Where the request for review is received thirty-six
7 months or more after the date of the entry of the order or
8 from the completion of the previous administrative review,
9 whichever is later, the bureau for child support enforce-
10 ment shall conduct a review to determine whether the
11 amount of the child support award in such order varies
12 from the amount of child support that would be awarded
13 at the time of the review pursuant to the guidelines for
14 child support awards contained in article 13-101, *et seq.*
15 If the amount of the child support award under the
16 existing order differs by ten percent or more from the
17 amount that would be awarded in accordance with the
18 child support guidelines, the bureau for child support
19 enforcement shall file with the family court a motion for
20 modification of the child support order. If the amount of
21 the child support award under the existing order differs by
22 less than ten percent from the amount that would be
23 awarded in accordance with the child support guidelines,
24 the bureau for child support enforcement may, if it deter-
25 mines that such action is in the best interest of the child or
26 otherwise appropriate, file with the family court a motion
27 for modification of the child support order.

28 (2) Where the request for review of a child support
29 award is received less than thirty-six months after the date
30 of the entry of the order or from the completion of the
31 previous administrative review, the bureau for child
32 support enforcement shall undertake a review of the case
33 only where it is alleged that there has been a substantial
34 change in circumstances. If the bureau for child support
35 enforcement determines that there has been a substantial
36 change in circumstances and if it is in the best interests of
37 the child, the bureau shall file with the family court a
38 motion for modification of the child support order in

39 accordance with the guidelines for child support awards
40 contained in article 13-101, *et seq.*, of this chapter.

41 (b) The bureau for child support enforcement shall
42 notify both parents at least once every three years of their
43 right to request a review of a child support order. The
44 notice may be included in any order granting or modifying
45 a child support award. The bureau for child support
46 enforcement shall give each parent at least thirty days'
47 notice before commencing any review and shall further
48 notify each parent, upon completion of a review, of the
49 results of the review, whether of a proposal to move for
50 modification or of a proposal that there should be no
51 change.

52 (c) When the result of the review is a proposal to move
53 for modification of the child support order, each parent
54 shall be given thirty days' notice of the hearing on the
55 motion, the notice to be directed to the last known address
56 of each party by first-class mail. When the result of the
57 review is a proposal that there be no change, any parent
58 disagreeing with that proposal may, within thirty days of
59 the notice of the results of the review, file with the court a
60 motion for modification setting forth in full the grounds
61 therefor.

62 (d) For the purposes of this section, a "substantial
63 change in circumstances" includes, but is not limited to, a
64 changed financial condition, a temporary or permanent
65 change in physical custody of the child which the court has
66 not ordered, increased need of the child or other financial
67 conditions. "Changed financial conditions" means in-
68 creases or decreases in the resources available to either
69 party from any source. Changed financial conditions
70 includes, but is not limited to, the application for or
71 receipt of any form of public assistance payments, unem-
72 ployment compensation and workers' compensation or a
73 fifteen percent or more variance from the amount of the

74 existing order and the amount of child support that would
75 be awarded according to the child support guidelines.

**ARTICLE 20. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCE-
MENT ACT.**

PART 1. GENERAL PROVISIONS.

§48-20-102. Definitions.

1 (a) "Abandoned" means left without provision for
2 reasonable and necessary care or supervision.

3 (b) "Child" means an individual who has not attained
4 eighteen years of age.

5 (c) "Child custody determination" means a judgment,
6 decree or other order of a court providing for the legal
7 custody, physical custody or visitation with respect to a
8 child. The term includes a permanent, temporary, initial
9 and modification order. The term does not include an
10 order relating to child support or other monetary obliga-
11 tion of an individual.

12 (d) "Child custody proceeding" means a proceeding in
13 which legal custody, physical custody or visitation with
14 respect to a child is an issue. The term includes a proceed-
15 ing for divorce, separation, neglect, abuse, dependency,
16 guardianship, paternity, termination of parental rights and
17 protection from domestic violence in which the issue may
18 appear. The term does not include a proceeding involving
19 juvenile delinquency, contractual emancipation or enforce-
20 ment under part 20-301, *et seq.*

21 (e) "Commencement" means the filing of the first
22 pleading in a proceeding.

23 (f) "Court" means an entity authorized under the law of
24 a state to establish, enforce or modify a child custody
25 determination. Reference to a court of West Virginia
26 means the family court.

27 (g) "Home state" means the state in which a child lived
28 with a parent or a person acting as a parent for at least six
29 consecutive months immediately before the commence-
30 ment of a child custody proceeding. In the case of a child
31 less than six months of age, the term means the state in
32 which the child lived from birth with any of the persons
33 mentioned. A period of temporary absence of any of the
34 mentioned persons is part of the period.

35 (h) "Initial determination" means the first child custody
36 determination concerning a particular child.

37 (i) "Issuing court" means the court that makes a child
38 custody determination for which enforcement is sought
39 under this chapter.

40 (j) "Issuing state" means the state in which a child
41 custody determination is made.

42 (k) "Modification" means a child custody determination
43 that changes, replaces, supersedes or is otherwise made
44 after a previous determination concerning the same child,
45 whether or not it is made by the court that made the
46 previous determination.

47 (l) "Person" means an individual; corporation; business
48 trust; estate; trust; partnership; limited liability company;
49 association; joint venture; government, governmental
50 subdivision, agency or instrumentality; public corporation;
51 or any other legal or commercial entity.

52 (m) "Person acting as a parent" means a person, other
53 than a parent, who:

54 (1) Has physical custody of the child or has had physical
55 custody for a period of six consecutive months, including
56 any temporary absence, within one year immediately
57 before the commencement of a child custody proceeding;
58 and

59 (2) Has been awarded legal custody by a court or claims
60 a right to legal custody under the law of this state.

61 (n) "Physical custody" means the physical care and
62 supervision of a child.

63 (o) "State" means a state of the United States, the
64 District of Columbia, Puerto Rico, the United States Virgin
65 Islands or any territory or insular possession subject to the
66 jurisdiction of the United States.

67 (p) "Tribe" means an Indian tribe or band or Alaskan
68 Native village which is recognized by federal law or
69 formally acknowledged by a state.

70 (q) "Warrant" means an order issued by a court autho-
71 rizing law-enforcement officers to take physical custody of
72 a child.

ARTICLE 24. ESTABLISHMENT OF PATERNITY.

§48-24-101. Paternity proceedings.

1 (a) A civil action to establish the paternity of a child and
2 to obtain an order of support for the child may be insti-
3 tuted, by verified complaint, in the family court of the
4 county where the child resides: *Provided*, That if such
5 venue creates a hardship for the parties, or either of them,
6 or if judicial economy requires, the court may transfer the
7 action to the county where either of the parties resides.

8 (b) A "paternity proceeding" is a summary proceeding,
9 equitable in nature and within the domestic relations
10 jurisdiction of the courts, wherein a family court upon the
11 petition of the state or another proper party may intervene
12 to determine and protect the respective personal rights of
13 a child for whom paternity has not been lawfully estab-
14 lished, of the mother of the child and of the putative father
15 of the child. The parties to a paternity proceeding are not
16 entitled to a trial by jury.

17 (c) The sufficiency of the statement of the material
18 allegations in the complaint set forth as grounds for relief
19 and the grant or denial of the relief prayed for in a partic-
20 ular case shall rest in the sound discretion of the court, to
21 be exercised by the court according to the circumstances
22 and exigencies of the case, having due regard for precedent
23 and the provisions of the statutory law of this state.

24 (d) A decree or order made and entered by a court in a
25 paternity proceeding shall include a determination of the
26 filial relationship, if any, which exists between a child and
27 his or her putative father, and, if such relationship is
28 established, shall resolve dependent claims arising from
29 family rights and obligations attendant to such filial
30 relationship.

31 (e) A paternity proceeding may be brought by any of the
32 following persons:

33 (1) An unmarried woman with physical or legal custody
34 of a child to whom she gave birth;

35 (2) A married woman with physical or legal custody of
36 a child to whom she gave birth, if the complaint alleges
37 that:

38 (A) The married woman lived separate and apart from
39 her husband preceding the birth of the child;

40 (B) The married woman did not cohabit with her hus-
41 band at any time during such separation and that such
42 separation has continued without interruption; and

43 (C) The respondent, rather than her husband, is the
44 father of the child;

45 (3) The state of West Virginia, including the bureau for
46 child support enforcement;

47 (4) Any person who is not the mother of the child but
48 who has physical or legal custody of the child;

49 (5) The guardian or committee of the child;

50 (6) The next friend of the child when the child is a minor;

51 (7) By the child in his or her own right at any time after
52 the child's eighteenth birthday but prior to the child's
53 twenty-first birthday; or

54 (8) A man who believes he is the father of a child born
55 out of wedlock when there has been no prior judicial
56 determination of paternity.

57 (f) Blood or tissue samples taken pursuant to the provi-
58 sions of this article may be ordered to be taken in such
59 locations as may be convenient for the parties so long as
60 the integrity of the chain of custody of the samples can be
61 preserved.

62 (g) A person who has sexual intercourse in this state
63 submits to the jurisdiction of the courts of this state for a
64 proceeding brought under this article with respect to a
65 child who may have been conceived by that act of inter-
66 course. Service of process may be perfected according to
67 the rules of civil procedure.

68 (h) When the person against whom the proceeding is
69 brought has failed to plead or otherwise defend the action
70 after proper service has been obtained, judgment by
71 default shall be issued by the court as provided by the
72 rules of civil procedure.

**§48-24-103. Medical testing procedures to aid in the determina-
tion of paternity.**

1 (a) Prior to the commencement of an action for the
2 establishment of paternity, the bureau for child support
3 enforcement may order the mother, her child and the man
4 to submit to genetic tests to aid in proving or disproving
5 paternity. The bureau may order the tests upon the
6 request, supported by a sworn statement, of any person
7 entitled to petition the court for a determination of
8 paternity as provided in section one of this article. If the

9 request is made by a party alleging paternity, the state-
10 ment shall set forth facts establishing a reasonable possi-
11 bility or requisite sexual contact between the parties. If
12 the request is made by a party denying paternity, the
13 statement may set forth facts establishing a reasonable
14 possibility of the nonexistence of sexual contact between
15 the parties or other facts supporting a denial of paternity.
16 If genetic testing is not performed pursuant to an order of
17 the bureau for child support enforcement, the court may,
18 on its own motion or shall upon the motion of any party,
19 order such tests. A request or motion may be made upon
20 ten days' written notice to the mother and alleged father
21 without the necessity of filing a complaint. When the tests
22 are ordered, the court or the bureau shall direct that the
23 inherited characteristics, including, but not limited to,
24 blood types be determined by appropriate testing proce-
25 dures at a hospital, independent medical institution or
26 independent medical laboratory duly licensed under the
27 laws of this state or any other state and an expert qualified
28 as an examiner of genetic markers shall analyze, interpret
29 and report on the results to the court or to the bureau for
30 child support enforcement. The results shall be considered
31 as follows:

32 (1) Blood or tissue test results which exclude the man as
33 the father of the child are admissible and shall be clear
34 and convincing evidence of nonpaternity and, if a com-
35 plaint has been filed, the court shall, upon considering
36 such evidence, dismiss the action.

37 (2) Blood or tissue test results which show a statistical
38 probability of paternity of less than ninety-eight percent
39 are admissible and shall be weighed along with other
40 evidence of the respondent's paternity.

41 (3) Undisputed blood or tissue test results which show a
42 statistical probability of paternity of more than ninety-
43 eight percent shall, when filed, legally establish the man as
44 the father of the child for all purposes and child support

45 may be established pursuant to the provisions of this
46 chapter.

47 (4) When a party desires to challenge the results of the
48 blood or tissue tests or the expert's analysis of inherited
49 characteristics, he or she shall file a written protest with
50 the family court or with the bureau for child support
51 enforcement, if appropriate, within thirty days of the filing
52 of such test results and serve a copy of such protest upon
53 the other party. The written protest shall be filed at least
54 thirty days prior to any hearing involving the test results.
55 The court or the bureau for child support enforcement,
56 upon reasonable request of a party, shall order that
57 additional tests be made by the same laboratory or another
58 laboratory within thirty days of the entry of the order, at
59 the expense of the party requesting additional testing.
60 Costs shall be paid in advance of the testing. When the
61 results of the blood or tissue tests or the expert's analysis
62 which show a statistical probability of paternity of more
63 than ninety-eight percent are confirmed by the additional
64 testing, then the results are admissible evidence which is
65 clear and convincing evidence of paternity. The admission
66 of the evidence creates a presumption that the man tested
67 is the father.

68 (b) Documentation of the chain of custody of the blood
69 or tissue specimens is competent evidence to establish the
70 chain of custody. A verified expert's report shall be
71 admitted at trial unless a challenge to the testing proce-
72 dures or a challenge to the results of test analysis has been
73 made before trial. The costs and expenses of making the
74 tests shall be paid by the parties in proportions and at
75 times determined by the court.

76 (c) Except as provided in subsection (d) of this section,
77 when a blood test is ordered pursuant to this section, the
78 moving party shall initially bear all costs associated with
79 the blood test unless that party is determined by the court
80 to be financially unable to pay those costs. This determi-

81 nation shall be made following the filing of an affidavit
82 pursuant to section one, article two, chapter fifty-nine of
83 this code. When the court finds that the moving party is
84 unable to bear that cost, the cost shall be borne by the
85 state of West Virginia. Following the finding that a person
86 is the father based on the results of a blood test ordered
87 pursuant to this section, the court shall order that the
88 father be ordered to reimburse the moving party for the
89 costs of the blood tests unless the court determines, based
90 upon the factors set forth in this section, that the father is
91 financially unable to pay those costs.

92 (d) When a blood test is ordered by the bureau for child
93 support enforcement, the bureau shall initially bear all
94 costs subject to recoupment from the alleged father if
95 paternity is established.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART 2. DEFINITIONS.

§48-27-204. Family or household members defined.

- 1 "Family or household members" means persons who:
- 2 (1) Are or were married to each other;
 - 3 (2) Are or were living together as spouses;
 - 4 (3) Are or were sexual or intimate partners;
 - 5 (4) Are or were dating: *Provided*, That a casual acquaint-
6 tance or ordinary fraternization between persons in a
7 business or social context does not establish a dating
8 relationship;
 - 9 (5) Are or were residing together in the same household;
 - 10 (6) Have a child in common regardless of whether they
11 have ever married or lived together;
 - 12 (7) Have the following relationships to another person:

- 13 (A) Parent;
- 14 (B) Stepparent;
- 15 (C) Brother or sister;
- 16 (D) Half-brother or half-sister;
- 17 (E) Stepbrother or stepsister;
- 18 (F) Stepfather-in-law or stepmother-in-law;
- 19 (G) Child or stepchild;
- 20 (H) Daughter-in-law or son-in-law;
- 21 (I) Stepdaughter-in-law or stepson-in-law;
- 22 (J) Grandparent;
- 23 (K) Stepgrandparent;
- 24 (L) Aunt, aunt-in-law or step-aunt;
- 25 (M) Uncle, uncle-in-law or step-uncle;
- 26 (N) Niece or nephew;
- 27 (O) First or second cousin; or
- 28 (8) Have the relationships set forth in paragraphs (A)
- 29 through (O), subdivision (7) of this section to a family or
- 30 household member, as defined in subdivisions (1) through
- 31 (6) of this section.

§48-27-205. Final hearing defined.

- 1 “Final hearing” means the hearing before a family court
- 2 judge following the entry of an order by a magistrate as a
- 3 result of the emergency hearing.

§48-27-209. Protective order defined.

- 1 “Protective order” means an emergency protective order
- 2 entered by a magistrate as a result of the emergency

3 hearing or a protective order entered by a family court
4 judge upon final hearing.

PART 3. PROCEDURE.

§48-27-304. Commencement of proceeding.

1 (a) An action under this article is commenced by the
2 filing of a verified petition in the magistrate court.

3 (b) No person shall be refused the right to file a petition
4 under the provisions of this article. No person shall be
5 denied relief under the provisions of this article if she or he
6 presents facts sufficient under the provisions of this article
7 for the relief sought.

8 (c) Husband and wife are competent witnesses in
9 domestic violence proceedings and cannot refuse to testify
10 on the grounds of the privileged nature of their communi-
11 cations.

PART 4. COORDINATION WITH PENDING COURT ACTIONS.

**§48-27-402. Proceedings in magistrate court when temporary
divorce, annulment or separate maintenance
order is in effect.**

1 (a) The provisions of this section apply where a tempo-
2 rary order has been entered by a family court in an action
3 for divorce, annulment or separate maintenance, notwith-
4 standing the provisions of subsection 27-401(c) of this
5 article.

6 (b) A person who is a party to an action for divorce,
7 annulment or separate maintenance in which a temporary
8 order has been entered pursuant to section 5-501 of this
9 chapter may petition the magistrate court for a temporary
10 emergency protective order pursuant to this section for any
11 violation of the provisions of this article occurring after
12 the date of entry of the temporary order pursuant to
13 section 5-501 of this chapter.

14 (c) The only relief that a magistrate may award pursuant
15 to this section is a temporary emergency protective order:

16 (1) Directing the respondent to refrain from abusing the
17 petitioner or minor children, or both;

18 (2) Ordering the respondent to refrain from entering the
19 school, business or place of employment of the petitioner
20 or household members or family members for the purpose
21 of violating the protective order; and

22 (3) Ordering the respondent to refrain from contacting,
23 telephoning, communicating with, harassing or verbally
24 abusing the petitioner.

25 (d) A temporary emergency protective order may modify
26 an award of custody or visitation only upon a showing, by
27 clear and convincing evidence, of the respondent's abuse of
28 a child, as abuse is defined in section 27-202 of this article.
29 An order of modification shall clearly state which party
30 has custody and describe why custody or visitation ar-
31 rangements were modified.

32 (e) (1) The magistrate shall forthwith transmit a copy of
33 any temporary emergency protective order, together with
34 a copy of the petition, by mail or by facsimile machine to
35 the family court in which the action is pending and to
36 law-enforcement agencies. The family court shall set a
37 hearing on the matter to be held no later than ten days
38 following the entry of the order by magistrate. The family
39 court shall give notice of the hearing date, time and place
40 to the parties and shall advise them of their opportunity to
41 appear and participate in a hearing to determine whether
42 the order entered by the magistrate should be extended by
43 the family court to a date certain or should be vacated.
44 The notice shall also provide that a party's failure to
45 appear may result in the entry of an order extending the
46 order entered by the magistrate to a date certain or
47 vacating the order of the magistrate. Subsequent to the
48 hearing, the family court shall forthwith enter an order

49 and cause the same to be served on the parties and trans-
50 mitted by mail or by facsimile machine to the issuing
51 magistrate. The magistrate court clerk shall forward a
52 copy of the family court order to law-enforcement agen-
53 cies.

54 (2) If no temporary order has been entered in the pend-
55 ing action for divorce, annulment or separate maintenance,
56 the family court shall forthwith return the order with such
57 explanation to the issuing magistrate. The magistrate who
58 issued the order shall vacate the order, noting thereon the
59 reason for termination. The magistrate court clerk shall
60 transmit a copy of the vacated order to the parties and
61 law-enforcement agencies.

62 (f) Notwithstanding any other provision of this code, if
63 the family court extends the temporary emergency protec-
64 tive order entered by the magistrate or if, pursuant to the
65 provisions of section 5-509, the family court enters a
66 protective order as temporary relief in an action for
67 divorce, the family court order shall be treated and
68 enforced as a protective order issued under the provisions
69 of this article.

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

1 (a) Upon the filing of a verified petition under this
2 article, the magistrate court may enter an emergency
3 protective order as it may deem necessary to protect the
4 petitioner or minor children from domestic violence and,
5 upon good cause shown, may do so ex parte without the
6 necessity of bond being given by the petitioner. Clear and
7 convincing evidence of immediate and present danger of
8 abuse to the petitioner or minor children shall constitute
9 good cause for the issuance of an emergency protective
10 order pursuant to this section. If the respondent is not
11 present at the proceeding, the petitioner or the petitioner's
12 legal representative shall certify to the court, in writing,

13 the efforts which have been made to give notice to the
14 respondent or just cause why notice should not be re-
15 quired. Copies of medical reports or records may be
16 admitted into evidence to the same extent as though the
17 original thereof. The custodian of such records shall not
18 be required to be present to authenticate such records for
19 any proceeding held pursuant to this subsection. If the
20 magistrate court determines to enter an emergency protec-
21 tive order, the order shall prohibit the respondent from
22 possessing firearms.

23 (b) Following the proceeding, the magistrate court shall
24 order a copy of the petition to be served immediately upon
25 the respondent, together with a copy of any emergency
26 protective order entered pursuant to the proceedings, a
27 notice of the final hearing before the family court and a
28 statement of the right of the respondent to appear and
29 participate in the final hearing as provided in subsection
30 (d) of this section. Copies of any order entered under the
31 provisions of this section, a notice of the final hearing
32 before the family court and a statement of the right of the
33 petitioner to appear and participate in the final hearing, as
34 provided in subsection (d) of this section, shall also be
35 delivered to the petitioner. Copies of any order entered
36 shall also be delivered to any law-enforcement agency
37 having jurisdiction to enforce the order, including municipi-
38 pal police, the county sheriff's office and local office of the
39 state police, within twenty-four hours of the entry of the
40 order. An emergency protective order is effective until
41 modified by order of the family court upon hearing as
42 provided in subsection (d) of this section. The order is in
43 full force and effect in every county in this state.

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

49 (d) The family court shall schedule a final hearing on
50 each petition in which an emergency protective order has
51 been entered by a magistrate. The hearing shall be sched-
52 uled not later than ten days following the entry of the
53 order by the magistrate. The notice of the final hearing
54 shall be served on the respondent and delivered to the
55 petitioner, as provided in subsection (b) of this section, and
56 must set forth the hearing date, time and place and include
57 a statement of the right of the parties to appear and
58 participate in the final hearing. The notice must also
59 provide that the petitioner's failure to appear will result in
60 a dismissal of the petition and that the respondent's failure
61 to appear may result in the entry of a protective order
62 against him or her for a period of ninety or one hundred
63 eighty days, as determined by the court. The notice must
64 also include the name, mailing address, physical location
65 and telephone number of the family court having jurisdic-
66 tion over the proceedings. To facilitate the preparation of
67 the notice of final hearing required by the provisions of
68 this subsection, the family court must provide the magis-
69 trate court with a day and time in which final hearings
70 may be scheduled before the family court within the time
71 required by law.

72 (e) Upon final hearing the petitioner must prove, by a
73 preponderance of the evidence, the allegation of domestic
74 violence or that he or she reported or witnessed domestic
75 violence against another and has, as a result, been abused,
76 threatened, harassed or has been the subject of other
77 actions to attempt to intimidate him or her or such
78 petition shall be dismissed by the family court. If the
79 respondent has not been served with notice of the emer-
80 gency protective order, the hearing may be continued to
81 permit service to be effected. The failure to obtain service
82 upon the respondent does not constitute a basis to dismiss
83 the petition. Copies of medical reports may be admitted
84 into evidence to the same extent as though the original

85 thereof, upon proper authentication, by the custodian of
86 such records.

87 (f) No person requested by a party to be present during
88 a hearing held under the provisions of this article shall be
89 precluded from being present unless such person is to be a
90 witness in the proceeding and a motion for sequestration
91 has been made and such motion has been granted. A
92 person found by the court to be disruptive may be pre-
93 cluded from being present.

94 (g) Upon hearing, the family court may dismiss the
95 petition or enter a protective order for a period of ninety
96 days or, in the discretion of the court, for a period of one
97 hundred eighty days. The hearing may be continued on
98 motion of the respondent, at the convenience of the court.
99 Otherwise, the hearing may be continued by the court no
100 more than seven days. If a hearing is continued, the family
101 court may modify the emergency protective order as it
102 deems necessary.

PART 5. PROTECTIVE ORDERS; VISITATION ORDERS.

§48-27-501. Issuance of protective order; modification of order.

1 (a) Upon final hearing, the court shall enter a protective
2 order if it finds, after hearing the evidence, that the
3 petitioner has proved the allegations of domestic violence
4 by a preponderance of the evidence. If the respondent is
5 present at the hearing and elects not to contest the allega-
6 tions of domestic violence or does not contest the relief
7 sought, the petitioner is not required to produce evidence
8 and prove the allegations of domestic violence and the
9 court may directly address the issues of the relief re-
10 quested.

11 (b) The court may modify the terms of a protective order
12 at any time upon subsequent petition filed by any party.

§48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.

1 (a) Except as otherwise provided in subsection 27-401(d)
2 of this article, a protective order, entered by the family
3 court pursuant to this article, is effective for either ninety
4 days or one hundred eighty days, in the discretion of the
5 court. If the court enters an order for a period of ninety
6 days, upon receipt of a written request from the petitioner
7 prior to the expiration of the ninety-day period, the family
8 court shall extend its order for an additional ninety-day
9 period.

10 (b) To be effective, a written request to extend an order
11 from ninety days to one hundred eighty days must be
12 submitted to the court prior to the expiration of the
13 original ninety-day period. A notice of the extension shall
14 be sent by the clerk of the court to the respondent by first-
15 class mail, addressed to the last known address of the
16 respondent as indicated by the court file. The extension of
17 time is effective upon mailing of the notice.

18 (c) Certified copies of any order entered or extension
19 notice made under the provisions of this section shall be
20 served upon the respondent by first-class mail, addressed
21 to the last known address of the respondent as indicated
22 by the court file, and delivered to the petitioner and any
23 law-enforcement agency having jurisdiction to enforce the
24 order, including the city police, the county sheriff's office
25 or local office of the West Virginia state police within
26 twenty-four hours of the entry of the order. The protective
27 order shall be in full force and effect in every county of
28 this state.

29 (d) The family court may modify the terms of a protec-
30 tive order upon motion of either party.

31 (e) The clerk of the circuit court shall cause a copy of
32 any protective order entered by the family court pursuant

33 to the provisions of this article or pursuant to the provi-
34 sions of chapter forty-eight of this code to be forwarded to
35 the appropriate federal agency for registration of domestic
36 violence offenders as required by federal law.

§48-27-508. Costs to be paid to family court fund.

1 Any person against whom a protective order is issued
2 shall be assessed costs of twenty-five dollars. Such costs
3 shall be paid to the family court fund established pursuant
4 to section twenty-two, article two-a, chapter fifty-one of
5 this code.

§48-27-510. Appeals.

1 (a) A petitioner who has been denied an emergency
2 protective order may file a petition for appeal of the
3 denial, within five days of the denial, to the family court.

4 (b) Any party to a protective order entered upon final
5 hearing may file a petition for appeal, within ten days of
6 the entry of the order in family court, to the circuit court.
7 The order shall remain in effect pending an appeal unless
8 stayed by order of the family court sua sponte or upon
9 motion of a party, or by order of the circuit court upon
10 motion of a party. No bond shall be required for any
11 appeal under this section.

12 (c) A petition for appeal filed pursuant to this section
13 shall be heard by the court within ten days from the filing
14 of the petition.

15 (d) The standard of review of findings of fact made by
16 the family court is clearly erroneous and the standard of
17 review of application of the law to the facts is an abuse of
18 discretion standard.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-1. Family courts established.

1 There is hereby created in each county in this state a
2 family court to be designated as “The Family Court of
3 _____ County, West Virginia”.

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

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

3 (1) All actions for divorce, annulment or separate
4 maintenance brought under the provisions of articles
5 three, four or five, chapter forty-eight of this code, except
6 as provided in subsections (b) and (c) of this section;

7 (2) All actions to obtain orders of support brought under
8 the provisions of part one, article fourteen, chapter forty-
9 eight of this code;

10 (3) All actions to establish paternity brought under the
11 provisions of article twenty-four, chapter forty-eight of
12 this code and any dependent claims related to such actions
13 regarding child support, parenting plans or other alloca-
14 tion of custodial responsibility or decision-making respon-
15 sibility for a child;

16 (4) All actions for grandparent visitation brought under
17 the provisions of article ten, chapter forty-eight of this
18 code;

19 (5) All actions for the interstate enforcement of family
20 support brought under article sixteen, chapter forty-eight
21 of this code and for the interstate enforcement of child
22 custody brought under the provisions of article twenty,
23 chapter forty-eight of this code;

24 (6) All actions for the establishment of a parenting plan
25 or other allocation of custodial responsibility or decision-
26 making responsibility for a child, including actions
27 brought under the uniform child custody jurisdiction and

28 enforcement act, as provided in article twenty, chapter
29 forty-eight of this code;

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

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

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

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

45 (11) All actions brought by an obligor to contest the
46 enforcement of an order of support through the withhold-
47 ing from income of amounts payable as support or to
48 contest an affidavit of accrued support, filed with the
49 circuit clerk, which seeks to collect an arrearage; and

50 (12) All final hearings in domestic violence proceedings.

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

60 (c) If an action for divorce, annulment or separate
61 maintenance is pending and a petition is filed pursuant to
62 the provisions of article six, chapter forty-nine of this code
63 alleging abuse or neglect of a child by either of the parties
64 to the divorce, annulment or separate maintenance action,
65 the orders of the circuit court in which the abuse or neglect
66 petition is filed shall supercede and take precedence over
67 an order of the family court respecting the allocation of
68 custodial and decision-making responsibility for the child
69 between the parents. If no order for the allocation of
70 custodial and decision-making responsibility for the child
71 between the parents has been entered by the family court
72 in the pending action for divorce, annulment or separate
73 maintenance, the family court shall stay any further
74 proceedings concerning the allocation of custodial and
75 decision-making responsibility for the child between the
76 parents and defer to the orders of the circuit court in the
77 abuse or neglect proceedings.

78 (d) A family court is a court of limited jurisdiction. A
79 family court is a court of record only for the purpose of
80 exercising jurisdiction in the matters for which the juris-
81 diction of the family court is specifically authorized in this
82 section and in chapter forty-eight of this code. A family
83 court may not exercise the powers given courts of record
84 in section one, article five, chapter fifty-one of this code or
85 exercise any other powers provided for courts of record in
86 this code unless specifically authorized by the Legislature.
87 A family court judge is not a "judge of any court of record"
88 or a "judge of a court of record" as the terms are defined
89 and used in article nine of this chapter.

**§51-2A-3. Number of family court judges; assignment of family
court judges by family court circuits.**

1 (a) A total of thirty-five family court judges shall serve
2 throughout the state.

3 (b) The state is divided into twenty-six family court
4 circuits with the family court judges allocated as follows:

5 (1) The counties of Brooke, Hancock and Ohio constitute
6 the first family court circuit and have two family court
7 judges;

8 (2) The counties of Marshall, Wetzel and Tyler constitute
9 the second family court circuit and have one family court
10 judge;

11 (3) The counties of Pleasants, Ritchie, Wood and Wirt
12 constitute the third family court circuit and have two
13 family court judges;

14 (4) The counties of Doddridge, Roane, Calhoun and
15 Gilmer constitute the fourth family court circuit and have
16 one family court judge;

17 (5) The counties of Mason and Jackson constitute the
18 fifth family court circuit and have one family court judge;

19 (6) The county of Cabell constitutes the sixth family
20 court circuit and has two family court judges;

21 (7) The county of Wayne constitutes the seventh family
22 court circuit and has one family court judge;

23 (8) The county of Mingo constitutes the eighth family
24 court circuit and has one family court judge;

25 (9) The county of Logan constitutes the ninth family
26 court circuit and has one family court judge;

27 (10) The counties of Lincoln and Boone constitute the
28 tenth family court circuit and have one family court judge;

29 (11) The county of Kanawha constitutes the eleventh
30 family court circuit and has four family court judges;

31 (12) The counties of McDowell and Mercer constitute the
32 twelfth family court circuit and have two family court
33 judges;

34 (13) The counties of Raleigh and Wyoming constitute the
35 thirteenth family court circuit and have two family court
36 judges;

37 (14) The counties of Fayette and Summers constitute the
38 fourteenth family court circuit and have one family court
39 judge;

40 (15) The counties of Greenbrier and Monroe constitute
41 the fifteenth family court circuit and have one family court
42 judge;

43 (16) The counties of Clay, Nicholas and Webster consti-
44 tute the sixteenth family court circuit and have one family
45 court judge;

46 (17) The counties of Braxton, Lewis and Upshur consti-
47 tute the seventeenth family court circuit and have one
48 family court judge;

49 (18) The county of Harrison constitutes the eighteenth
50 family court circuit and has one family court judge;

51 (19) The county of Marion constitutes the nineteenth
52 family court circuit and has one family court judge;

53 (20) The county of Monongalia constitutes the twentieth
54 family court circuit and has one family court judge;

55 (21) The counties of Barbour, Preston and Taylor
56 constitute the twenty-first family court circuit and have
57 one family court judge;

58 (22) The counties of Grant, Tucker and Randolph
59 constitute the twenty-second family court circuit and have
60 one family court judge;

61 (23) The counties of Mineral, Hampshire and Morgan
62 constitute the twenty-third family court circuit and have
63 one family court judge;

64 (24) The counties of Berkeley and Jefferson constitute
65 the twenty-fourth family court circuit and have two family
66 court judges;

67 (25) The counties of Hardy, Pendleton and Pocahontas
68 constitute the twenty-fifth family court circuit and have
69 one family court judge; and

70 (26) The county of Putnam constitutes the twenty-sixth
71 family court circuit and has one family court judge.

72 (c) The Legislature has the authority and may determine
73 to realign the family court circuits and has the authority
74 and may determine to increase or decrease the number of
75 family court judges within a family court circuit, from
76 time to time. Any person appointed or elected to the office
77 of family court judge acknowledges the authority of the
78 Legislature to realign family court circuits and the author-
79 ity of the Legislature to increase or decrease the number of
80 family court judges within a family court circuit.

§51-2A-4. Qualifications of family court judges.

1 (a) A family court judge must be a resident of this state,
2 a member in good standing of the West Virginia state bar,
3 admitted to practice law in this state for at least five years
4 prior to election, and must, at the time he or she takes
5 office, and thereafter during his or her continuance in
6 office, reside in the family court circuit for which he or she
7 is a judge.

8 (b) A family court judge may not engage in any other
9 business, occupation or employment inconsistent with the
10 expeditious, proper and impartial performance of his or
11 her duties as a judicial officer. A family court judge is not
12 permitted to engage in the outside practice of law and
13 shall devote full time to his or her duties as a judicial
14 officer.

15 (c) The supreme court of appeals may establish require-
16 ments for family court judges to attend and complete
17 courses of instruction and continuing educational instruc-
18 tion in principles of family law and procedure.

19 (d) A person's acceptance of the office of family court
20 judge pursuant to appointment or election constitutes the
21 person's consent, agreement and election during the term
22 of office not to become a member of the judges retirement
23 system solely by reason of or based upon service as a
24 family court judge and an acknowledgment by the person
25 of the sole authority of the Legislature to determine the
26 eligibility of family court judges to participate in a retire-
27 ment system. Notwithstanding any other provision of law
28 to the contrary, upon final judicial determination that a
29 person, individually or as a member of a class, is eligible
30 for participation in the judges retirement system solely by
31 reason of or based upon service as a family court judge, no
32 additional persons except as may be provided for in this
33 subsection may be admitted to the judges retirement
34 system existing upon the effective date of the final judicial
35 determination. A circuit judge or justice of the supreme
36 court of appeals who is a member of the existing judges
37 retirement system whose employment continues beyond
38 the final judicial determination shall continue to contrib-
39 ute to and participate in the existing judges retirement
40 system without a change in plan provisions or benefits.
41 Any person who was previously a member of the judges
42 retirement system and who later returns to participating
43 employment as a circuit judge or justice of the supreme
44 court of appeals after the final judicial determination has
45 the right to elect to return to the existing judges retirement
46 system and participate during the judge's or justice's term
47 or terms of office.

**§51-2A-5. Term of office of family court judge; initial appoint-
ment; elections.**

1 (a) Before the first day of December, two thousand one,
2 family court judges shall be appointed by the governor to
3 serve in the family court circuits as provided for in section
4 three of this article. The initial term of office for the
5 family court judges first appointed shall commence on the

6 first day of January, two thousand two, and end on the
7 thirty-first day of December, two thousand two.

8 (b) Beginning with the primary and general elections to
9 be conducted in the year two thousand two, family court
10 judges shall be elected. In family court circuits having two
11 or more family court judges there shall be, for election
12 purposes, numbered divisions corresponding to the number
13 of family court judges in each area. Each family court
14 judge shall be elected at large by the entire family court
15 circuit. In each numbered division of a family court
16 circuit, the candidates for nomination or election shall be
17 voted upon and the votes cast for the candidates in each
18 division shall be tallied separately from the votes cast for
19 candidates in other numbered divisions within the family
20 court circuit. The candidate or candidates receiving the
21 highest number of the votes cast within a numbered
22 division shall be nominated or elected, as the case may be.

23 (c) The term of office for all family court judges elected
24 in two thousand two shall be for six years, commencing on
25 the first day of January, two thousand three, and ending
26 on the thirty-first day of December, two thousand eight.
27 Subsequent terms of office for family court judges elected
28 thereafter shall be for eight years.

**§51-2A-6. Compensation and expenses of family court judges
and their staffs.**

1 (a) Until the thirty-first day of December, two thousand
2 two, a family court judge is entitled to receive as compen-
3 sation for his or her services an annual salary of sixty
4 thousand dollars. Beginning the first day of January, two
5 thousand three, a family court judge is entitled to receive
6 as compensation for his or her services an annual salary of
7 sixty-two thousand five hundred dollars.

8 (b) The secretary-clerk of the family court judge is
9 appointed by the family court judge and serves at his or

10 her will and pleasure. The secretary-clerk of the family
11 court judge is entitled to receive an annual salary of
12 twenty-two thousand three hundred eight dollars. In
13 addition, beginning the first day of October, one thousand
14 nine hundred ninety-nine, any secretary-clerk who was
15 employed by a family law master on the twentieth day of
16 May, one thousand nine hundred ninety-nine, and who was
17 so employed for at least two years prior to such date, is
18 entitled to receive an additional five hundred dollars per
19 year up to ten years of such prior employment, as provided
20 in the prior enactment of section eight of this article
21 during the second extraordinary session of the Legislature
22 in the year one thousand nine hundred ninety-nine.
23 Further, the secretary-clerk will receive such percentage or
24 proportional salary increases as may be provided for by
25 general law for other public employees and is entitled to
26 receive the annual incremental salary increase as provided
27 for in article five, chapter five of this code.

28 (c) The family court judge may employ not more than
29 one family case coordinator who serves at his or her will
30 and pleasure. The annual salary of the family case coordi-
31 nator of the family court judge shall be established by the
32 administrative director of the supreme court of appeals but
33 may not exceed thirty-five thousand dollars. The family
34 case coordinator will receive such percentage or propor-
35 tional salary increases as may be provided for by general
36 law for other public employees and is entitled to receive
37 the annual incremental salary increase as provided for in
38 article five, chapter five of this code.

39 (d) The sheriff or his or her designated deputy shall serve
40 as a bailiff for a family court judge. The sheriff of each
41 county shall serve or designate persons to serve so as to
42 assure that a bailiff is available when a family court judge
43 determines the same is necessary for the orderly and
44 efficient conduct of the business of the family court.

45 (e) Disbursement of salaries for family court judges and
46 members of their staffs are made by or pursuant to the
47 order of the director of the administrative office of the
48 supreme court of appeals.

49 (f) Family court judges and members of their staffs are
50 allowed their actual and necessary expenses incurred in
51 the performance of their duties. The expenses and com-
52 pensation will be determined and paid by the director of
53 the administrative office of the supreme court of appeals
54 under such guidelines as he or she may prescribe, as
55 approved by the supreme court of appeals.

56 (g) Notwithstanding any other provision of law, family
57 court judges are not eligible to participate in the retire-
58 ment system for judges under the provisions of article nine
59 of this chapter.

**§51-2A-7. Powers; administrative and judicial functions of
family court judge.**

1 (a) The family court judge will exercise any power or
2 authority provided for in this article, in chapter forty-eight
3 of this code or as otherwise provided by general law.
4 Additionally, the family court judge has the authority to:

- 5 (1) Manage the business before them;
- 6 (2) Summon witnesses and compel their attendance in
7 court;
- 8 (3) Exercise reasonable control over discovery;
- 9 (4) Compel and supervise the production of evidence;
- 10 (5) Discipline attorneys;
- 11 (6) Prevent abuse of process; and
- 12 (7) Correct errors in a record.

13 (b) The family court judge has responsibility for the
14 supervision and administration of the family court. A
15 family court judge may promulgate local administrative
16 rules governing the conduct and administration of the
17 family court. In family court circuits with more than one
18 family court judge, all family court judges must agree to
19 the rules. If all of the family court judges in a family court
20 circuit cannot agree, the chief judge of each circuit court
21 in the counties in which the family court circuit is located
22 shall promulgate the local administrative rules. If the
23 chief judges of the circuit courts cannot agree, the supreme
24 court of appeals may promulgate the local administrative
25 rules. Local administrative rules are subordinate and
26 subject to the rules of the supreme court of appeals or the
27 orders of the chief justice. Rules promulgated by the
28 family or circuit court are made by order entered upon the
29 order book of the circuit court and are effective when filed
30 with the clerk of the supreme court of appeals.

31 (c) Prior to the two thousand three regular session of the
32 Legislature and annually thereafter, the supreme court of
33 appeals shall report to the Legislature on the caseload in
34 each family court circuit and shall recommend changes to
35 the management of the family court as the supreme court
36 of appeals deems warranted or necessary to improve the
37 family court.

38 (d) The supreme court of appeals shall promulgate a
39 procedural rule to establish time-keeping requirements for
40 family court judges, family case coordinators and
41 secretary-clerks of family court judges so as to assure the
42 maximum funding of incentive payments, grants and other
43 funding sources available to the state for the processing of
44 cases filed for the location of absent parents, the establish-
45 ment of paternity and the establishment, modification and
46 enforcement of child support orders.

§51-2A-8. Rules of practice and procedure; applicability of rules of evidence; record of hearings; duties of clerk of circuit court.

1 (a) Pleading, practice and procedure in matters before a
2 family court judge are governed by rules of practice and
3 procedure for family law promulgated by the supreme
4 court of appeals.

5 (b) The West Virginia rules of evidence apply to proceed-
6 ings before a family court judge.

7 (c) Hearings before a family court shall be recorded
8 electronically. A magnetic tape or other electronic record-
9 ing medium on which a hearing is recorded shall be
10 indexed and securely preserved by the secretary-clerk of
11 the family court judge and shall not be placed in the case
12 file in the office of the circuit clerk: *Provided*, That upon
13 the request of the family court judge, the magnetic tapes or
14 other electronic recording media shall be stored by the
15 clerk of the circuit court. When requested by either of the
16 parties, a family court judge shall provide a duplicate copy
17 of the tape or other electronic recording medium of each
18 hearing held. For evidentiary purposes, a duplicate of such
19 electronic recording prepared by the secretary-clerk shall
20 be a "writing" or "recording" as those terms are defined in
21 rule 1001 of the West Virginia rules of evidence and unless
22 the duplicate is shown not to reflect the contents accu-
23 rately, it shall be treated as an original in the same manner
24 that data stored in a computer or similar data is regarded
25 as an "original" under such rule. The party requesting the
26 copy shall pay an amount equal to the actual cost of the
27 tape or other medium or the sum of five dollars, whichever
28 is greater. Unless otherwise ordered by the court, the
29 preparation of a transcript and the payment of the cost
30 thereof shall be the responsibility of the party requesting
31 the transcript.

32 (d) The recording of the hearing or the transcript of
33 testimony, as the case may be, and the exhibits, together
34 with all documents filed in the proceeding, constitute the
35 exclusive record and, on payment of lawfully prescribed
36 costs, shall be made available to the parties.

37 (e) In any proceeding in which a party has filed an
38 affidavit that he or she is financially unable to pay the fees
39 and costs, the family court judge shall determine whether
40 either party is financially able to pay the fees and costs
41 based on the information set forth in the affidavit or on
42 any evidence submitted at the hearing. If a family court
43 judge determines that either party is financially able to
44 pay the fees and costs, the family court judge shall assess
45 the payment of such fees and costs accordingly as part of
46 an order. The provisions of this subsection do not alter or
47 diminish the provisions of section one, article two, chapter
48 fifty-nine of this code.

49 (f) The clerks of the circuit court shall have, within the
50 scope of the jurisdiction of family courts, all the duties and
51 powers prescribed by law that clerks exercise on behalf of
52 circuit courts: *Provided*, That a family court judge may
53 not require the presence or attendance of a circuit clerk or
54 deputy circuit clerk at any hearing before the family court.

§51-2A-9. Contempt powers of family court judge.

1 (a) In addition to the powers of contempt established in
2 chapter forty eight of this code, a family court judge may:

3 (1) Sanction persons through civil contempt proceedings
4 when necessary to preserve and enforce the rights of
5 private parties or to administer remedies granted by the
6 court;

7 (2) Regulate all proceedings in a hearing before the
8 family court judge; and

9 (3) Punish direct contempts that are committed in the
10 presence of the court or that obstruct, disrupt or corrupt
11 the proceedings of the court.

12 (b) A family court judge may enforce compliance with
13 his or her lawful orders with remedial or coercive sanc-
14 tions designed to compensate a complainant for losses
15 sustained and to coerce obedience for the benefit of the
16 complainant. Sanctions must give the contemnor an
17 opportunity to purge himself or herself. In selecting
18 sanctions, the court must use the least possible power
19 adequate to the end proposed. A person who lacks the
20 present ability to comply with the order of the court may
21 not be confined for a civil contempt. Sanctions may
22 include, but are not limited to, seizure or impoundment of
23 property to secure compliance with a prior order. Ancil-
24 lary relief may provide for an award of attorney's fees.

§51-2A-10. Motion for reconsideration of family court order.

1 (a) Any party may file a motion for reconsideration of a
2 temporary or final order of the family court for the
3 following reasons: (1) Mistake, inadvertence, surprise,
4 excusable neglect or unavoidable cause; (2) newly discov-
5 ered evidence which by due diligence could not have been
6 available at the time the matter was submitted to the court
7 for decision; (3) fraud, misrepresentation or other miscon-
8 duct of an adverse party; (4) clerical or other technical
9 deficiencies contained in the order; or (5) any other reason
10 justifying relief from the operation of the order.

11 (b) A motion for reconsideration must be filed with the
12 clerk of the circuit court within a reasonable time and for
13 reasons set forth in subdivisions (1), (2) or (3), subsection
14 (a) of this section, not more than one year after the order
15 was entered and served on the other party in accordance
16 with rule 5 of the rules of civil procedure. The family
17 court must enter an order ruling on the motion within
18 thirty days of the date of the filing of the motion.

§51-2A-11. Petition for appeal.

1 (a) Within thirty days following the entry of a final order
2 of a family court judge or the entry of a final order of any
3 senior status circuit judge, circuit judge or other judicial
4 officer appointed to serve pursuant to the provisions of
5 section nineteen of this article, any party may file a
6 petition for appeal with the circuit court. No appeal may
7 be had under the provisions of this article from any order
8 of a family court judge or from any order of another
9 judicial officer temporarily serving as a family court judge
10 other than a final order.

11 (b) A petition for appeal of a final order of the family
12 court shall be filed in the office of the clerk of the circuit
13 court. At the time of filing the petition, a copy of the
14 petition for appeal must be served on all parties to the
15 proceeding in the same manner as pleadings subsequent to
16 an original complaint are served under rule 5 of the rules
17 of civil procedure.

18 (c) The circuit judge may require, or a party may choose
19 to submit with the petition for appeal, a brief in support of
20 the petition.

21 (d) A respondent shall have fifteen days after the filing
22 of a petition to file a reply to the petition for appeal. The
23 reply must be served on all parties to the proceeding in the
24 same manner required for service of the petition. The
25 circuit judge may require, or a party may choose to submit
26 with the reply, a brief in opposition to the petition.

27 (e) In addition to the reply, the respondent may file a
28 cross-petition to the petition for appeal within fifteen days
29 after the filing of the petition. The respondent to the
30 cross-petition shall have fifteen days after the filing of the
31 cross-petition to file a reply. The cross-petition and any
32 reply must be served in the same manner required for
33 service of the original petition. The circuit judge may

34 require or either party may choose to submit a brief on the
35 cross-petition.

36 (f) The supreme court of appeals shall develop and
37 provide forms for appeals filed pursuant to this section.
38 The forms shall be made available for distribution in the
39 offices of the clerks of the circuit courts and in the offices
40 of the secretary-clerks to the family court judges.

41 (g) The supreme court of appeals shall promulgate a
42 supervisory rule setting forth educational requirements in
43 domestic relations matters for circuit court judges.

44 (h) An appeal from the final order of any judicial officer
45 assigned or appointed pursuant to the provisions of section
46 nineteen of this article shall be perfected and treated in all
47 respects as an appeal from an order of the family court.
48 The terms "family court" or "family court judge" as
49 provided in this section and in sections twelve, thirteen,
50 fourteen and fifteen of this article mean the judicial officer
51 who entered the final order which is the subject of an
52 appeal.

§51-2A-12. Stay of proceedings pending appeal.

1 (a) Any person desiring to file a petition for appeal from
2 a final order of the family court may file a motion for a
3 stay of proceedings to the family court in which the order
4 was entered. The motion for a stay shall be filed with the
5 clerk of the circuit court and served on the respondent in
6 accordance with rule 5 of the rules of civil procedure. The
7 family court may, sua sponte, order a stay of all or part of
8 a final order pending appeal. Subject to the provisions of
9 subsection (c) of this section, the family court may order a
10 stay for the period of time allowed for the filing of a
11 petition for appeal to the circuit court or for any addi-
12 tional period of time pending disposition of the appeal. If
13 the circuit court refuses to consider the petition for appeal,
14 the stay is vacated.

15 (b) If the family court judge denies a motion for a stay of
16 the proceedings pending appeal, or if the relief afforded is
17 not acceptable, the person desiring to file the petition for
18 appeal may file a motion for a stay of the proceedings to
19 the circuit court. The motion for stay shall be filed with
20 the clerk of the circuit court and served upon the other
21 party in accordance with rule five of the rules of civil
22 procedure. Subject to the provisions of subsection (c) of
23 this section, the circuit court may order a stay for the
24 period of time allowed for the filing of a petition for
25 appeal to the circuit court or for any additional period of
26 time pending disposition of the appeal. If the circuit court
27 refuses to consider the petition for appeal, the stay is
28 vacated.

29 (c) An order granting a motion for a stay under the
30 provisions of this section may not include a stay of an
31 award for the payment of spousal support or child support
32 pending the appeal, except that an award of past-due child
33 support may be stayed pending an appeal.

§51-2A-13. Motion to dismiss appeal.

1 At any time following the filing of a petition for appeal
2 of a final order of a family court, either party may move
3 the circuit court to dismiss the appeal on any of the
4 following grounds: (1) A joint agreement of the parties to
5 the dismissal; (2) failure to properly perfect the appeal; (3)
6 failure to obey an order of the family court or circuit court;
7 (4) lack of an appealable order; or (5) lack of jurisdiction.
8 Such motion shall be filed with the clerk of the circuit
9 court and served on the respondent in accordance with rule
10 5 of the rules of civil procedure. No oral argument shall be
11 held on such motion unless requested by the court.

**§51-2A-14. Review by circuit court; record; standard of review;
temporary order upon remand.**

1 (a) The circuit court may refuse to consider the petition
2 for appeal, may affirm or reverse the order, may affirm or

3 reverse the order in part or may remand the case with
4 instructions for further hearing before the family court
5 judge.

6 (b) In considering a petition for appeal, the circuit court
7 may only consider the record as provided in subsection (d),
8 section eight of this article. The circuit court shall review
9 the findings of fact made by the family court judge under
10 the clearly erroneous standard and shall review the
11 application of law to the facts under an abuse of discretion
12 standard.

13 (c) If the circuit court agrees to consider a petition for
14 appeal, the court shall provide the parties an opportunity
15 to appear for oral argument, upon the request of either
16 party or in the discretion of the court. The provisions of
17 this subsection are effective until the adoption of rules by
18 the supreme court of appeals governing the appellate
19 procedures of family courts.

20 (d) If the proceeding is remanded to the family court, the
21 circuit court must enter appropriate temporary orders for
22 a parenting plan or other allocation of custodial responsi-
23 bility or decision-making responsibility for a child, child
24 support, spousal support or such other temporary relief as
25 the circumstances of the parties may require.

26 (e) The circuit court must enter an order ruling on a
27 petition for appeal within sixty days from the last day a
28 reply to the petition for appeal could have been filed. If
29 the circuit court does not enter the order within the sixty-
30 day period or does not, within the sixty-day period, enter
31 an order stating just cause why the order has not been
32 timely entered, the circuit clerk shall send a written notice
33 to the parties that unless the parties both file an objection
34 within fourteen days of the date of the notice, the appeal
35 will be transferred to the supreme court of appeals as
36 provided in section fifteen of this article due to the failure
37 of the circuit court to timely enter an order. The appeal

38 shall be transferred without the necessity of the filing of
39 any petition or further document by the petitioner.

**§51-2A-15. Review by supreme court of appeals; assistance for
pro se appellants.**

1 (a) If both of the parties file, either jointly or separately,
2 within fourteen days following the entry of the final order
3 of a family court judge, a notice of intent to file an appeal
4 from the final order of the family court directly to the
5 supreme court of appeals and to waive their right to file a
6 petition for appeal with the circuit court, the petition for
7 appeal of the final order of the family court may be filed
8 with the supreme court of appeals in accordance with the
9 provisions of article five, chapter fifty-eight of this code
10 and the rules of appellate procedure, except that the
11 standard of review for any such appeal is the same as set
12 forth in subsection (b), section fourteen of this article.

13 (b) If a circuit court judge refuses to consider a petition
14 for appeal or if a party is adversely affected by the order
15 entered by the circuit court upon review of the final order
16 of the family court, the party may seek review of the order
17 of the circuit court by the supreme court of appeals. If a
18 petition for appeal to the circuit court is transferred to the
19 supreme court of appeals pursuant to the provisions of
20 subsection (d), section fourteen of this article, the petition
21 for appeal filed in the circuit court will be considered as a
22 petition for appeal to the supreme court of appeals. The
23 supreme court of appeals has jurisdiction to hear and
24 entertain an appeal from an order of a circuit court or the
25 transfer of an appeal to the supreme court of appeals as
26 provided in this article in the same manner provided for
27 civil appeals in article five, chapter fifty-eight of this code
28 and in the rules of appellate procedure, except that the
29 standard of review for any such appeal is the same as set
30 forth in subsection (b), section fourteen of this article.

31 (c) The supreme court of appeals shall promulgate rules
32 to assist pro se litigants in the filing and processing of

33 family court appeals to the circuit court and to the su-
34 preme court. Such rules may address, but are not limited
35 to, expedited means of transcribing family court records,
36 use of asynchronous data communication network or other
37 alternate forms of transmission for conducting appellate
38 hearings, alternate requirements for the number of copies
39 to be provided to the supreme court of appeals, and other
40 appropriate measures which will provide meaningful
41 appellate access to the courts pursuant to section seven-
42 teen, article III of the West Virginia constitution.

**§51-2A-16. Expiration of appellate procedures; exceptions;
report requirements.**

1 (a) The provisions of sections eleven, twelve, thirteen,
2 fourteen and fifteen of this article shall expire and be of no
3 force and effect after the thirtieth day of June, two thou-
4 sand five, except as otherwise provided by subsection (b)
5 of this section.

6 (b) Appeals that are pending before a circuit court or the
7 supreme court of appeals on the thirtieth day of June, two
8 thousand five, but not decided before the first day of July,
9 two thousand five, shall proceed to resolution in accor-
10 dance with the provisions of sections eleven, twelve,
11 thirteen, fourteen and fifteen of this article, notwithstand-
12 ing the provisions of subsection (a) of this section that
13 provide for the expiration of those sections. The supreme
14 court of appeals shall, by rule, provide procedures for
15 those appeals that are remanded but not concluded prior
16 to the first day of July, two thousand five, in the event that
17 the appeals process set forth in sections eleven, twelve,
18 thirteen, fourteen and fifteen of this article is substantially
19 altered as of the first day of July, two thousand five.

20 (c) Prior to the two thousand three regular session of the
21 Legislature and annually thereafter, the supreme court of
22 appeals shall report to the joint committee on government
23 and finance the number of appeals from final orders of the

24 family court filed in the various circuit courts and in the
25 supreme court of appeals, the number of pro se appeals
26 filed, the subject matter of the appeals, the time periods in
27 which appeals are concluded, the number of cases re-
28 manded upon appeal and such other detailed information
29 so as to enable the Legislature to study the appellate
30 procedures for family court matters and to consider the
31 possible necessity and feasibility of creating an intermedi-
32 ate appellate court or other system of appellate procedure.

§51-2A-17. Disciplinary proceedings for family court judges.

1 A family court judge may be censured, temporarily
2 suspended or retired as provided for in section eight,
3 article VIII of the West Virginia constitution. A family
4 court judge may be removed from office only by impeach-
5 ment in accordance with the provisions of section nine,
6 article IV of the West Virginia constitution.

§51-2A-18. Vacancy in the office of family court judge.

1 If a vacancy occurs in the office of family court judge,
2 the governor shall fill the vacancy by appointment as
3 provided in section three, article ten, chapter three of this
4 code.

§51-2A-19. Temporary assignment of family court judges.

1 (a) Upon the occurrence of a vacancy in the office of
2 family court judge, the disqualification of a family court
3 judge or the inability of a family court judge to attend to
4 his or her duties because of illness, temporary absence or
5 any other reason, the chief justice of the supreme court of
6 appeals may assign the family court judge of any other
7 family court circuit, or any senior status circuit judge or
8 circuit judge of any judicial circuit, to hear and determine
9 any and all matters then or thereafter pending in the
10 family court to which the family court judge is assigned.
11 While so assigned, the family court judge, senior status
12 circuit judge or circuit judge has all of the powers of the

13 regularly elected family court judge of the family court
14 circuit.

15 (b) When, in the discretion of the chief justice of the
16 supreme court of appeals, the urgency or volume of cases
17 in a family court circuit so requires, the chief justice may
18 assign a senior status circuit judge, a circuit judge of any
19 judicial circuit or a family court judge of any family court
20 division to serve temporarily in a family court circuit.
21 When a senior status circuit judge or other circuit judge is
22 so assigned, he or she has all of the powers of a regularly
23 elected family court judge.

24 (c) The chief justice of the supreme court of appeals may
25 appoint a person who has previously served as a family
26 law master or family court judge to serve as a temporary
27 family court judge as disqualification, recusal, vacation,
28 illness or the ends of justice may dictate.

29 (d) The supreme court of appeals shall promulgate a
30 supervisory rule setting forth educational requirements for
31 persons assigned to serve temporarily as family court
32 judges pursuant to the provision of this section.

**§51-2A-20. County commissions required to furnish offices for
the family court judges.**

1 Each county commission of this state has a duty to
2 provide premises for the family court which are adequate
3 for the conduct of the duties required of the court under
4 the provisions of this article and of chapter forty-eight of
5 this code and which conform to standards established by
6 rules promulgated by the supreme court of appeals. The
7 administrative office of the supreme court of appeals shall
8 pay to the county commission a reasonable amount as rent
9 for the premises furnished by the county commission to the
10 family court and his or her staff pursuant to the provisions
11 of this section.

§51-2A-21. Budget of the family court.

1 The budget for the payment of the salaries and benefits
2 of the family court judges and clerical and secretarial
3 assistants shall be included in the appropriation for the
4 supreme court of appeals. The family court administration
5 fund, heretofore created as the family law master adminis-
6 tration fund, is continued as a special account in the state
7 treasury. The fund shall operate as a special fund adminis-
8 tered by the state auditor which shall be appropriated by
9 line item by the Legislature for payment of administrative
10 expenses of family courts. All agencies or entities receiv-
11 ing federal matching funds for the services of family court
12 judges and their staff, including, but not limited to, the
13 commissioner of the bureau for child support enforcement
14 and the secretary of the department of health and human
15 resources, shall enter into an agreement with the adminis-
16 trative office of the supreme court of appeals whereby all
17 federal matching funds paid to and received by said
18 agencies or entities for the activities by family court judges
19 and the program staff shall be paid into the family court
20 administration fund. Said agreement shall provide for
21 advance payments into the fund by such agencies, from
22 available federal funds pursuant to Title IV-D of the Social
23 Security Act and in accordance with federal regulations.

§51-2A-22. Family court fund.

1 The office and the clerks of the circuit courts shall, on or
2 before the tenth day of each month, transmit all amounts
3 directed to be paid to the family court fund under any
4 provision of this code to the state treasurer for deposit in
5 the state treasury to the credit of a special revenue fund
6 known as the "family court fund" and created by prior
7 enactment of former section twenty-three, article four,
8 chapter forty-eight-a of this code. All moneys paid into
9 the state treasury and credited to the "family court fund"
10 shall be used by the administrative office of the supreme
11 court of appeals solely for paying the costs associated with
12 the duties imposed upon the family courts under the

13 provisions of this article or under chapter forty-eight of
14 this code which require activities by the family court
15 judges or members of their staff which are not subject to
16 being matched with federal funds or subject to reimburse-
17 ment by the federal government. Such moneys shall not be
18 treated by the auditor and treasurer as part of the general
19 revenue of the state. Expenditures from the fund shall be
20 for the purposes set forth in this section and are not
21 authorized from collections but are to be made only in
22 accordance with appropriation by the Legislature and in
23 accordance with the provisions of article three, chapter
24 twelve of this code and upon the fulfillment of the provi-
25 sions set forth in article two, chapter five-a of this code:
26 *Provided*, That for the fiscal year ending the thirtieth day
27 of June, two thousand two, expenditures are authorized
28 from collections rather than pursuant to an appropriation
29 by the Legislature.

§51-2A-23. Operative dates; terminology.

1 (a) Except as provided in subsection (b) of this section,
2 the provisions of Enrolled Senate Bill No. 5007, passed
3 during the fifth extraordinary session of the Legislature,
4 two thousand one, become operable on the first day of
5 January, two thousand two. It is intended that the family
6 law master system in existence on the first day of July, two
7 thousand one, will continue to function under the prior
8 enactment of this article, notwithstanding the passage of
9 Enrolled Senate Bill No. 5007, until the first day of
10 January, two thousand two, when the existing family law
11 master system is replaced with the system of family court
12 judges provided for in this article.

13 (b) Notwithstanding the provisions of subsection (a) of
14 this section, the provisions of section five of this article
15 providing for the initial appointment of family judges by
16 the governor become operable on the first day of October,
17 two thousand one.

18 (c) After the effective date of this article, whenever the
19 terms “master”, “law master” or “family law master”
20 appear in this code, the terms shall have the same meaning
21 as “family court judge”.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-1a. Definitions.

1 (a) As used in this article, the term “judge”, “judge of
2 any court of record” or “judge of any court of record of
3 this state” shall mean, refer to and include judges of the
4 several circuit courts and justices of the supreme court of
5 appeals. For purposes of this article, such terms do not
6 mean, refer to or include family court judges.

7 (b) “Beneficiary” means any person, except a member,
8 who is entitled to an annuity or other benefit payable by
9 the retirement system.

10 (c) “Board” means the consolidated public retirement
11 board created pursuant to article ten-d, chapter five of this
12 code.

13 (d) “Internal Revenue Code” means the Internal Revenue
14 Code of 1986, as amended.

15 (e) “Member” means a judge participating in this system.

16 (f) “Plan year” means the twelve-month period com-
17 mencing on the first day of July of any designated year and
18 ending the following thirtieth day of June.

19 (g) “Required beginning date” means the first day of
20 April of the calendar year following the later of: (a) The
21 calendar year in which the member attains age seventy and
22 one-half; or (b) the calendar year in which the member
23 retires or otherwise separates from covered employment.

24 (h) “Retirement system” or “system” means the judges
25 retirement system created and established by this article.

26 Notwithstanding any other provision of law to the con-
27 trary, the provisions of this article are applicable only to
28 circuit judges and justices of the supreme court of appeals
29 in the manner specified in this article. No service as a
30 family court judge may be construed to qualify a person to
31 participate in the judges retirement system or used in any
32 manner as credit toward eligibility for retirement benefits
33 under the judges retirement system.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

**§59-1-28a. Disposition of filing fees in divorce and other civil
actions and fees for services in criminal cases.**

1 (a) Except for those payments to be made from amounts
2 equaling filing fees received for the institution of actions
3 for divorce, separate maintenance and annulment as
4 prescribed in subsection (b) of this section, for each civil
5 action instituted under the rules of civil procedure, any
6 statutory summary proceeding, any extraordinary remedy,
7 the docketing of civil appeals or any other action, cause,
8 suit or proceeding in the circuit court, the clerk of the
9 court shall, at the end of each month, pay into the funds or
10 accounts described in this subsection an amount equal to
11 the amount set forth in this subsection of every filing fee
12 received for instituting the action as follows:

13 (1) Into the regional jail and correctional facility author-
14 ity fund in the state treasury established pursuant to the
15 provisions of section ten, article twenty, chapter thirty-one
16 of this code, the amount of sixty dollars; and

17 (2) Into the court security fund in the state treasury
18 established pursuant to the provisions of section fourteen,
19 article three, chapter fifty-one of this code, the amount of
20 five dollars.

21 (b) For each action for divorce, separate maintenance or
22 annulment instituted in the circuit court, the clerk of the
23 court shall, at the end of each month, report to the su-
24 preme court of appeals the number of actions filed by
25 persons unable to pay and pay into the funds or accounts
26 in this subsection an amount equal to the amount set forth
27 in this subsection of every filing fee received for instituting
28 the divorce action as follows:

29 (1) Into the regional jail and correctional facility author-
30 ity fund in the state treasury established pursuant to the
31 provisions of section ten, article twenty, chapter thirty-one
32 of this code, the amount of ten dollars;

33 (2) Into the special revenue account of the state treasury,
34 established pursuant to section six hundred four, article
35 two, chapter forty-eight of this code, an amount of thirty
36 dollars;

37 (3) Into the family court fund established under section
38 twenty-two, article two-a, chapter fifty-one of this code,
39 an amount of seventy dollars; and

40 (4) Into the court security fund in the state treasury,
41 established pursuant to the provisions of section fourteen,
42 article three, chapter fifty-one of this code, the amount of
43 five dollars.

44 (c) Notwithstanding any provision of subsection (a) or
45 (b) of this section to the contrary, the clerk of the court
46 shall, at the end of each month, pay into the family court
47 fund established under section twenty-two, article two-a,
48 chapter fifty-one of this code an amount equal to the
49 amount of every fee received for petitioning for the
50 modification of an order involving child custody, child
51 visitation, child support or spousal support as determined
52 by subdivision (3), subsection (a), section eleven of this
53 article and for petitioning for an expedited modification of

54 a child support order as provided in subdivision (4),
55 subsection (a), section eleven of this article.

56 (d) The clerk of the court from which a protective order
57 is issued shall, at the end of each month, pay into the
58 family court fund established under section twenty-two,
59 article two-a, chapter fifty-one of this code an amount
60 equal to every fee received pursuant to the provisions of
61 section five hundred eight, article twenty-seven, chapter
62 forty-eight of this code.

63 (e) The clerk of each circuit court shall, at the end of
64 each month, pay into the regional jail and correctional
65 facility authority fund in the state treasury an amount
66 equal to forty dollars of every fee for service received in
67 any criminal case against any respondent convicted in such
68 court and shall pay an amount equal to five dollars of
69 every such fee into the court security fund in the state
70 treasury established pursuant to the provisions of section
71 fourteen, article three, chapter fifty-one of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Carly Myers
.....
Chairman Senate Committee

W. J. [unclear]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

David Holmes
.....
Clerk of the Senate

Gary M. [unclear]
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *4th*
October
Day of *October*, 2001.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/24/01

Time 4:18pm