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HB 4694

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006

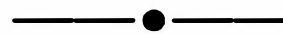


# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

## House Bill No. 4694

(By Delegates Amores, Moore, Longstreth,  
Webster and Ellem)



Passed March 11, 2006

In Effect Ninety Days from Passage

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**E N R O L L E D**

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FOR

**H. B. 4694**

(BY DELEGATES AMORES, MOORE, LONGSTRETH,  
WEBSTER AND ELLEM)

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[Passed March 11, 2006; in effect ninety days from passage.]

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AN ACT to amend and reenact §49-1-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-6-2, §49-6-3, §49-6-5 and §49-6-5b of said code, all relating to abuse and neglect of children; definition of battered parent; consideration of factors associated with a battered parent in abuse and neglect cases; petition to court; battered parent entitled to an attorney; court determination of battered parent; providing treatment and assistance for battered parent; consideration of acts or attempted acts of murder, voluntary manslaughter or unlawful or malicious wounding with serious injury by one parent against other parent in abuse and neglect cases; considering aggravating circumstances of abuse, neglect or violent acts of parent in temporary and permanent custody determinations when the acts are committed against the other parent; considering aggravating circumstances of abuse, neglect or violent acts of parent in temporary

and permanent custody determinations when the acts are committed or against other children in the household or other children under the parent's care or custody; department's obligation to attempt to preserve the family when aggravating circumstances exist; and definitions.

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

That §49-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-6-2, §49-6-3, §49-6-5 and §49-6-5b of said code be amended and reenacted, all to read as follows:

**ARTICLE 1. PURPOSES; DEFINITIONS.**

**§49-1-3. Definitions relating to abuse and neglect.**

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

3       (1) A parent, guardian or custodian who knowingly or  
4 intentionally inflicts, attempts to inflict or knowingly allows  
5 another person to inflict, physical injury or mental or emotional  
6 injury, upon the child or another child in the home; or

7       (2) Sexual abuse or sexual exploitation; or

8       (3) The sale or attempted sale of a child by a parent,  
9 guardian or custodian in violation of section sixteen, article  
10 four, chapter forty-eight of this code; or

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

13       In addition to its broader meaning, physical injury may  
14 include an injury to the child as a result of excessive corporal  
15 punishment.

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

20 (c) "Battered parent" means a parent, guardian or other  
21 custodian who has been judicially determined not to have  
22 condoned the abuse or neglect and has not been able to stop the  
23 abuse or neglect of the child or children due to being the victim  
24 of domestic violence as defined by section two hundred two,  
25 article twenty-seven, chapter forty-eight of this code, which  
26 domestic violence was perpetrated by the person or persons  
27 determined to have abused or neglected the child or children.

28 (d) "Child abuse and neglect" or "child abuse or neglect"  
29 means physical injury, mental or emotional injury, sexual  
30 abuse, sexual exploitation, sale or attempted sale or negligent  
31 treatment or maltreatment of a child by a parent, guardian or  
32 custodian who is responsible for the child's welfare, under  
33 circumstances which harm or threaten the health and welfare of  
34 the child.

35 (e) "Child abuse and neglect services" means social  
36 services which are directed toward:

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

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

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

45 (4) In cases where children have been removed from their  
46 families, providing services to the children and the families so  
47 as to reunify such children with their families or some portion  
48 thereof;

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

52 (6) Assuring the adequate care of children who have been  
53 placed in the custody of the department or third parties.

54 (f) "Imminent danger to the physical well-being of the  
55 child" means an emergency situation in which the welfare or  
56 the life of the child is threatened. Such emergency situation  
57 exists when there is reasonable cause to believe that any child  
58 in the home is or has been sexually abused or sexually ex-  
59 ploited, or reasonable cause to believe that the following  
60 conditions threaten the health or life of any child in the home:

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

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

66 (3) Nutritional deprivation;

67 (4) Abandonment by the parent, guardian or custodian;

68 (5) Inadequate treatment of serious illness or disease;

69 (6) Substantial emotional injury inflicted by a parent,  
70 guardian or custodian; or

71 (7) Sale or attempted sale of the child by the parent,  
72 guardian or custodian.

73 (g) "Legal guardianship" means the permanent relationship  
74 between a child and caretaker, established by order of the  
75 circuit court having jurisdiction over the child, pursuant to the  
76 provisions of chapters forty-eight and forty-nine of this code.

77 (h) "Multidisciplinary team" means a group of profession-  
78 als and paraprofessionals representing a variety of disciplines  
79 who interact and coordinate their efforts to identify, diagnose  
80 and treat specific cases of child abuse and neglect.  
81 Multidisciplinary teams may include, but are not limited to,  
82 medical, educational, child care and law-enforcement person-  
83 nel, social workers, psychologists and psychiatrists. Their goal  
84 is to pool their respective skills in order to formulate accurate  
85 diagnoses and to provide comprehensive coordinated treatment  
86 with continuity and follow-up for both parents and children.  
87 "Community team" means a multidisciplinary group which  
88 addresses the general problem of child abuse and neglect in a  
89 given community and may consist of several multidisciplinary  
90 teams with different functions.

91 (i) (1) "Neglected child" means a child:

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

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

102 (2) "Neglected child" does not mean a child whose educa-  
103 tion is conducted within the provisions of section one, article  
104 eight, chapter eighteen of this code.

105 (j) "Parenting skills" means a parent's competencies in  
106 providing physical care, protection, supervision and psychologi-  
107 cal support appropriate to a child's age and state of develop-  
108 ment.

109 (k) "Sexual abuse" means:

110 (A) As to a child who is less than sixteen years of age, any  
111 of the following acts which a parent, guardian or custodian shall  
112 engage in, attempt to engage in, or knowingly procure another  
113 person to engage in, with such child, notwithstanding the fact  
114 that the child may have willingly participated in such conduct  
115 or the fact that the child may have suffered no apparent physical  
116 injury or mental or emotional injury as a result of such conduct:

117 (i) Sexual intercourse;

118 (ii) Sexual intrusion; or

119 (iii) Sexual contact;

120 (B) As to a child who is sixteen years of age or older, any  
121 of the following acts which a parent, guardian or custodian shall  
122 engage in, attempt to engage in, or knowingly procure another  
123 person to engage in, with such child, notwithstanding the fact  
124 that the child may have consented to such conduct or the fact  
125 that the child may have suffered no apparent physical injury or  
126 mental or emotional injury as a result of such conduct:

127 (i) Sexual intercourse;

128 (ii) Sexual intrusion; or

129 (iii) Sexual contact;

130 (C) Any conduct whereby a parent, guardian or custodian  
131 displays his or her sex organs to a child, or procures another  
132 person to display his or her sex organs to a child, for the  
133 purpose of gratifying the sexual desire of the parent, guardian  
134 or custodian, of the person making such display, or of the child,  
135 or for the purpose of affronting or alarming the child.

136 (l) "Sexual contact" means sexual contact as that term is  
137 defined in section one, article eight-b, chapter sixty-one of this  
138 code.

139 (m) "Sexual exploitation" means an act whereby:

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

144 (2) A parent, guardian or custodian persuades, induces,  
145 entices or coerces a child to display his or her sex organs for the  
146 sexual gratification of the parent, guardian, custodian or a third  
147 person, or to display his or her sex organs under circumstances  
148 in which the parent, guardian or custodian knows such display  
149 is likely to be observed by others who would be affronted or  
150 alarmed.

151 (n) "Sexual intercourse" means sexual intercourse as that  
152 term is defined in section one, article eight-b, chapter sixty-one  
153 of this code.

154 (o) "Sexual intrusion" means sexual intrusion as that term  
155 is defined in section one, article eight-b, chapter sixty-one of  
156 this code.



157 (p) "Parental rights" means any and all rights and duties  
158 regarding a parent to a minor child, including, but not limited  
159 to, custodial rights and visitational rights and rights to partici-  
160 pate in the decisions affecting a minor child.

161 (q) "Placement" means any temporary or permanent  
162 placement of a child who is in the custody of the state in any  
163 foster home, group home or other facility or residence.

164 (r) "Serious physical abuse" means bodily injury which  
165 creates a substantial risk of death, which causes serious or  
166 prolonged disfigurement, prolonged impairment of health or  
167 prolonged loss or impairment of the function of any bodily  
168 organ.

169 (s) "Siblings" means children who have at least one  
170 biological parent in common or who have been legally adopted  
171 by the same parents or parent.

172 (t) "Time-limited reunification services" means individual,  
173 group, and family counseling, inpatient, residential or outpa-  
174 tient substance abuse treatment services, mental health services,  
175 assistance to address domestic violence, services designed to  
176 provide temporary child care and therapeutic services for  
177 families, including crisis nurseries and transportation to or from  
178 any such services, provided during fifteen of the most recent  
179 twenty-two months a child has been in foster care, as deter-  
180 mined by the earlier date of the first judicial finding that the  
181 child is subjected to abuse or neglect, or the date which is sixty  
182 days after the child is removed from home.

#### **ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.**

**§49-6-2. Petition to court when child believed neglected or  
abused—right to counsel; improvement period;  
hearing; priority of proceeding; transcript.**

1 (a) In any proceeding under the provisions of this article,  
2 the child, his or her or parents and his or her legally established  
3 custodian or other persons standing in loco parentis to him or  
4 her shall have the right to be represented by counsel at every  
5 stage of the proceedings and shall be informed by the court of  
6 their right to be so represented and that if they cannot pay for  
7 the services of counsel, that counsel will be appointed. Counsel  
8 of the child shall be appointed in the initial order. If the order  
9 gives physical custody of the child to the state, the initial order  
10 shall appoint counsel for the parents or, if the parents are  
11 separated or divorced, the parents or parent or other person or  
12 persons standing in loco parentis who had physical custody of  
13 the child for the majority of the time in the period immediately  
14 preceding the petition: *Provided*, That such representation shall  
15 only continue after the first appearance if the parent or other  
16 persons standing in loco parentis cannot pay for the services of  
17 counsel. Counsel for other parties shall only be appointed upon  
18 request for appointment of counsel. If the requesting parties  
19 have not retained counsel and cannot pay for the services of  
20 counsel, the court shall, by order entered of record, appoint an  
21 attorney or attorneys to represent the other party or parties and  
22 so inform the parties. Under no circumstances may the same  
23 attorney represent both the child and the other party or parties,  
24 nor shall the same attorney represent both parents or custodians.  
25 However, one attorney may represent both parents or custodians  
26 where both parents or guardians consent to this representation  
27 after the attorney fully discloses to the client the possible  
28 conflict and where the attorney assures the court that she or he  
29 is able to represent each client without impairing her or his  
30 professional judgment; however, if more than one child from a  
31 family is involved in the proceeding, one attorney may repre-  
32 sent all the children. A parent who has been judicially deter-  
33 mined to be battered shall be entitled to his or her own attorney.  
34 The court may allow to each attorney so appointed a fee in the  
35 same amount which appointed counsel can receive in felony

36 cases. Any attorney appointed pursuant to this section shall by  
37 the first day of July, one thousand nine hundred ninety-three,  
38 and three hours per year each year thereafter, receive a mini-  
39 mum of three hours of continuing legal education training on  
40 representation of children, child abuse and neglect: *Provided,*  
41 *however,* That where no attorney who has completed this  
42 training is available for such appointment, the court shall  
43 appoint a competent attorney with demonstrated knowledge of  
44 child welfare law to represent the child. Any attorney appointed  
45 pursuant to this section shall perform all duties required as an  
46 attorney licensed to practice law in the State of West Virginia.

47 (b) In any proceeding brought pursuant to the provisions of  
48 this article, the court may grant any respondent an improvement  
49 period in accord with the provisions of this article. During such  
50 period, the court may require temporary custody with a respon-  
51 sible person which has been found to be a fit and proper person  
52 for the temporary custody of the child or children or the state  
53 Department or other agency during the improvement period. An  
54 order granting such improvement period shall require the  
55 Department to prepare and submit to the court a family case  
56 plan in accordance with the provisions of section three, article  
57 six-d of this chapter.

58 (c) In any proceeding pursuant to the provisions of this  
59 article, the party or parties having custodial or other parental  
60 rights or responsibilities to the child shall be afforded a  
61 meaningful opportunity to be heard, including the opportunity  
62 to testify and to present and cross-examine witnesses. The  
63 petition shall not be taken as confessed. A transcript or record-  
64 ing shall be made of all proceedings unless waived by all  
65 parties to the proceeding. The rules of evidence shall apply.  
66 Where relevant, the court shall consider the efforts of the state  
67 Department to remedy the alleged circumstances. At the  
68 conclusion of the hearing, the court shall make a determination  
69 based upon the evidence and shall make findings of fact and

70 conclusions of law as to whether such child is abused or  
71 neglected and, if applicable, whether the parent, guardian, or  
72 custodian is a battered parent, all of which shall be incorporated  
73 into the order of the court. The findings must be based upon  
74 conditions existing at the time of the filing of the petition and  
75 proven by clear and convincing proof.

76 (d) Any petition filed and any proceeding held under the  
77 provisions of this article shall, to the extent practicable, be  
78 given priority over any other civil action before the court,  
79 except proceedings under article two-a, chapter forty-eight of  
80 this code and actions in which trial is in progress. Any petition  
81 filed under the provisions of this article shall be docketed  
82 immediately upon filing. Any hearing to be held at the end of  
83 an improvement period and any other hearing to be held during  
84 any proceedings under the provisions of this article shall be  
85 held as nearly as practicable on successive days and, with  
86 respect to said hearing to be held at the end of an improvement  
87 period, shall be held as close in time as possible after the end of  
88 said improvement period and shall be held within sixty days of  
89 the termination of such improvement period.

90 (e) Following the court's determination, it shall be inquired  
91 of the parents or custodians whether or not appeal is desired and  
92 the response transcribed. A negative response shall not be  
93 construed as a waiver. The evidence shall be transcribed and  
94 made available to the parties or their counsel as soon as  
95 practicable, if the same is required for purposes of further  
96 proceedings. If an indigent person intends to pursue further  
97 proceedings, the court reporter shall furnish a transcript of the  
98 hearing without cost to the indigent person if an affidavit is  
99 filed stating that he or she cannot pay therefor.

**§49-6-3. Petition to court when child believed neglected or abused**  
**— Temporary custody.**

1 (a) Upon the filing of a petition, the court may order that  
2 the child alleged to be an abused or neglected child be delivered  
3 for not more than ten days into the custody of the state depart-  
4 ment or a responsible person found by the court to be a fit and  
5 proper person for the temporary care of the child pending a  
6 preliminary hearing, if it finds that: (1) There exists imminent  
7 danger to the physical well-being of the child; and (2) there are  
8 no reasonably available alternatives to removal of the child,  
9 including, but not limited to, the provision of medical, psychiat-  
10 ric, psychological or homemaking services in the child's  
11 present custody: *Provided*, That where the alleged abusing  
12 person, if known, is a member of a household, the court shall  
13 not allow placement pursuant to this section of the child or  
14 children in said home unless the alleged abusing person is or  
15 has been precluded from visiting or residing in said home by  
16 judicial order. In a case where there is more than one child in  
17 the home, or in the temporary care, custody or control of the  
18 alleged offending parent, the petition shall so state, and  
19 notwithstanding the fact that the allegations of abuse or neglect  
20 may pertain to less than all of such children, each child in the  
21 home for whom relief is sought shall be made a party to the  
22 proceeding. Even though the acts of abuse or neglect alleged in  
23 the petition were not directed against a specific child who is  
24 named in the petition, the court shall order the removal of such  
25 child, pending final disposition, if it finds that there exists  
26 imminent danger to the physical well-being of the child and a  
27 lack of reasonable available alternatives to removal. The initial  
28 order directing such custody shall contain an order appointing  
29 counsel and scheduling the preliminary hearing, and upon its  
30 service shall require the immediate transfer of custody of such  
31 child or children to the department or a responsible relative  
32 which may include any parent, guardian, or other custodian.  
33 The court order shall state: (1) That continuation in the home is  
34 contrary to the best interests of the child and why; and (2)  
35 whether or not the department made reasonable efforts to

36 preserve the family and prevent the placement or that the  
37 emergency situation made such efforts unreasonable or impos-  
38 sible. The order may also direct any party or the department to  
39 initiate or become involved in services to facilitate reunification  
40 of the family.

41 (b) Whether or not the court orders immediate transfer of  
42 custody as provided in subsection (a) of this section, if the facts  
43 alleged in the petition demonstrate to the court that there exists  
44 imminent danger to the child, the court may schedule a prelimi-  
45 nary hearing giving the respondents at least five days' actual  
46 notice. If the court finds at the preliminary hearing that there  
47 are no alternatives less drastic than removal of the child and  
48 that a hearing on the petition cannot be scheduled in the interim  
49 period, the court may order that the child be delivered into the  
50 temporary custody of the department or a responsible person or  
51 agency found by the court to be a fit and proper person for the  
52 temporary care of the child for a period not exceeding sixty  
53 days: *Provided*, That the court order shall state: (1) That  
54 continuation in the home is contrary to the best interests of the  
55 child and set forth the reasons therefor; (2) whether or not the  
56 department made reasonable efforts to preserve the family and  
57 to prevent the child's removal from his or her home; (3)  
58 whether or not the department made reasonable efforts to  
59 preserve the family and to prevent the placement or that the  
60 emergency situation made such efforts unreasonable or impos-  
61 sible; and (4) what efforts should be made by the department,  
62 if any, to facilitate the child's return home: *Provided, however*,  
63 That if the court grants an improvement period as provided in  
64 section twelve of this article, the sixty-day limit upon tempo-  
65 rary custody is waived.

66 (c) If a child or children shall, in the presence of a child  
67 protective service worker, be in an emergency situation which  
68 constitutes an imminent danger to the physical well-being of the  
69 child or children, as that phrase is defined in section three,

70 article one of this chapter, and if such worker has probable  
71 cause to believe that the child or children will suffer additional  
72 child abuse or neglect or will be removed from the county  
73 before a petition can be filed and temporary custody can be  
74 ordered, the worker may, prior to the filing of a petition, take  
75 the child or children into his or her custody without a court  
76 order: *Provided*, That after taking custody of such child or  
77 children prior to the filing of a petition, the worker shall  
78 forthwith appear before a circuit judge or a juvenile referee of  
79 the county wherein custody was taken, or if no such judge or  
80 referee be available, before a circuit judge or a juvenile referee  
81 of an adjoining county, and shall immediately apply for an  
82 order ratifying the emergency custody of the child pending the  
83 filing of a petition. The circuit court of every county in the state  
84 shall appoint at least one of the magistrates of the county to act  
85 as a juvenile referee, who shall serve at the will and pleasure of  
86 the appointing court, and who shall perform the functions  
87 prescribed for such position by the provisions of this subsection.  
88 The parents, guardians or custodians of the child or  
89 children may be present at the time and place of application for  
90 an order ratifying custody, and if at the time the child or  
91 children are taken into custody by the worker, the worker  
92 knows which judge or referee is to receive the application, the  
93 worker shall so inform the parents, guardians or custodians. The  
94 application for emergency custody may be on forms prescribed  
95 by the supreme court of appeals or prepared by the prosecuting  
96 attorney or the applicant, and shall set forth facts from which it  
97 may be determined that the probable cause described above in  
98 this subsection exists. Upon such sworn testimony or other  
99 evidence as the judge or referee deems sufficient, the judge or  
100 referee may order the emergency taking by the worker to be  
101 ratified. If appropriate under the circumstances, the order may  
102 include authorization for an examination as provided for in  
103 subsection (b), section four of this article. If a referee issues  
104 such an order, the referee shall by telephonic communication

105 have such order orally confirmed by a circuit judge of the  
106 circuit or an adjoining circuit who shall on the next judicial day  
107 enter an order of confirmation. If the emergency taking is  
108 ratified by the judge or referee, emergency custody of the child  
109 or children shall be vested in the department until the expiration  
110 of the next two judicial days, at which time any such child  
111 taken into emergency custody shall be returned to the custody  
112 of his or her parent or guardian or custodian unless a petition  
113 has been filed and custody of the child has been transferred  
114 under the provisions of section three of this article.

115 (d) For purposes of the court's consideration of temporary  
116 custody pursuant to the provisions of subsection (a) or (b) of  
117 this section, the department is not required to make reasonable  
118 efforts to preserve the family if the court determines:

119 (1) The parent has subjected the child, another child of the  
120 parent, or any other child residing in the same household or  
121 under the temporary or permanent custody of the parent to  
122 aggravated circumstances which include, but are not limited to,  
123 abandonment, torture, chronic abuse and sexual abuse;

124 (2) The parent has:

125 (A) Committed murder of the child's other parent, another  
126 child of the parent, or any other child residing in the same  
127 household or under the temporary or permanent custody of the  
128 parent;

129 (B) Committed voluntary manslaughter of the child's other  
130 parent, another child of the parent, or any other child residing  
131 in the same household or under the temporary or permanent  
132 custody of the parent;

133 (C) Attempted or conspired to commit such a murder or  
134 voluntary manslaughter or been an accessory before or after the  
135 fact to either such crime; or



136 (D) Committed unlawful or malicious wounding that results  
137 in serious bodily injury to the child, the child's other parent, to  
138 another child of the parent, or any other child residing in the  
139 same household or under the temporary or permanent custody  
140 of the parent; or,

141 (3) The parental rights of the parent to another child have  
142 been terminated involuntarily.

**§49-6-5. Disposition of neglected or abused children.**

1 (a) Following a determination pursuant to section two of  
2 this article wherein the court finds a child to be abused or  
3 neglected, the department shall file with the court a copy of the  
4 child's case plan, including the permanency plan for the child.  
5 The term case plan means a written document that includes,  
6 where applicable, the requirements of the family case plan as  
7 provided for in section three, article six-d of this chapter and  
8 that also includes at least the following: A description of the  
9 type of home or institution in which the child is to be placed,  
10 including a discussion of the appropriateness of the placement  
11 and how the agency which is responsible for the child plans to  
12 assure that the child receives proper care and that services are  
13 provided to the parents, child and foster parents in order to  
14 improve the conditions in the parent(s) home; facilitate return  
15 of the child to his or her own home or the permanent placement  
16 of the child; and address the needs of the child while in foster  
17 care, including a discussion of the appropriateness of the  
18 services that have been provided to the child. The term  
19 "permanency plan" refers to that part of the case plan which is  
20 designed to achieve a permanent home for the child in the least  
21 restrictive setting available. The plan must document efforts to  
22 ensure that the child is returned home within approximate time  
23 lines for reunification as set out in the plan. Reasonable efforts  
24 to place a child for adoption or with a legal guardian may be  
25 made at the same time reasonable efforts are made to prevent

26 removal or to make it possible for a child to safely return home.  
27 If reunification is not the permanency plan for the child, the  
28 plan must state why reunification is not appropriate and detail  
29 the alternative placement for the child to include approximate  
30 time lines for when such placement is expected to become a  
31 permanent placement. This case plan shall serve as the family  
32 case plan for parents of abused or neglected children. Copies of  
33 the child's case plan shall be sent to the child's attorney and  
34 parent, guardian or custodian or their counsel at least five days  
35 prior to the dispositional hearing. The court shall forthwith  
36 proceed to disposition giving both the petitioner and respon-  
37 dents an opportunity to be heard. The court shall give prece-  
38 dence to dispositions in the following sequence:

39 (1) Dismiss the petition;

40 (2) Refer the child, the abusing parent, the battered parent  
41 or other family members to a community agency for needed  
42 assistance and dismiss the petition;

43 (3) Return the child to his or her own home under supervi-  
44 sion of the department;

45 (4) Order terms of supervision calculated to assist the child  
46 and any abusing parent or battered parent or parents or custo-  
47 dian which prescribe the manner of supervision and care of the  
48 child and which are within the ability of any parent or parents  
49 or custodian to perform;

50 (5) Upon a finding that the abusing parent or battered  
51 parent or parents are presently unwilling or unable to provide  
52 adequately for the child's needs, commit the child temporarily  
53 to the custody of the state department, a licensed private child  
54 welfare agency or a suitable person who may be appointed  
55 guardian by the court. The court order shall state: (A) That  
56 continuation in the home is contrary to the best interests of the

57 child and why; (B) whether or not the department has made  
58 reasonable efforts, with the child's health and safety being the  
59 paramount concern, to preserve the family, or some portion  
60 thereof, and to prevent or eliminate the need for removing the  
61 child from the child's home and to make it possible for the  
62 child to safely return home; (C) what efforts were made or that  
63 the emergency situation made such efforts unreasonable or  
64 impossible; and (D) the specific circumstances of the situation  
65 which made such efforts unreasonable if services were not  
66 offered by the department. The court order shall also determine  
67 under what circumstances the child's commitment to the  
68 department shall continue. Considerations pertinent to the  
69 determination include whether the child should: (i) Be contin-  
70 ued in foster care for a specified period; (ii) be considered for  
71 adoption; (iii) be considered for legal guardianship; (iv) be  
72 considered for permanent placement with a fit and willing  
73 relative; or (v) be placed in another planned permanent living  
74 arrangement, but only in cases where the department has  
75 documented to the circuit court a compelling reason for  
76 determining that it would not be in the best interests of the child  
77 to follow one of the options set forth in subparagraphs (i), (ii),  
78 (iii) or (iv) of this paragraph. The court may order services to  
79 meet the special needs of the child. Whenever the court  
80 transfers custody of a youth to the department, an appropriate  
81 order of financial support by the parents or guardians shall be  
82 entered in accordance with section five, article seven of this  
83 chapter; or

84 (6) Upon a finding that there is no reasonable likelihood  
85 that the conditions of neglect or abuse can be substantially  
86 corrected in the near future and, when necessary for the welfare  
87 of the child, terminate the parental, custodial and guardianship  
88 rights and responsibilities of the abusing parent and commit the  
89 child to the permanent sole custody of the nonabusing parent,  
90 if there be one, or, if not, to either the permanent guardianship  
91 of the department or a licensed child welfare agency. The court

92 may award sole custody of the child to a non-abusing battered  
93 parent. If the court shall so find, then in fixing its dispositional  
94 order the court shall consider the following factors: (A) The  
95 child's need for continuity of care and caretakers; (B) the  
96 amount of time required for the child to be integrated into a  
97 stable and permanent home environment; and (C) other factors  
98 as the court considers necessary and proper. Notwithstanding  
99 any other provision of this article, the court shall give consider-  
100 ation to the wishes of a child fourteen years of age or older or  
101 otherwise of an age of discretion as determined by the court  
102 regarding the permanent termination of parental rights. No  
103 adoption of a child shall take place until all proceedings for  
104 termination of parental rights under this article and appeals  
105 thereof are final. In determining whether or not parental rights  
106 should be terminated, the court shall consider the efforts made  
107 by the department to provide remedial and reunification  
108 services to the parent. The court order shall state: (i) That  
109 continuation in the home is not in the best interest of the child  
110 and why; (ii) why reunification is not in the best interests of the  
111 child; (iii) whether or not the department made reasonable  
112 efforts, with the child's health and safety being the paramount  
113 concern, to preserve the family, or some portion thereof, and to  
114 prevent the placement or to eliminate the need for removing the  
115 child from the child's home and to make it possible for the  
116 child to safely return home, or that the emergency situation  
117 made such efforts unreasonable or impossible; and (iv) whether  
118 or not the department made reasonable efforts to preserve and  
119 reunify the family, or some portion thereof, including a  
120 description of what efforts were made or that such efforts were  
121 unreasonable due to specific circumstances.

122 (7) For purposes of the court's consideration of the disposi-  
123 tion custody of a child pursuant to the provisions of this  
124 subsection, the department is not required to make reasonable  
125 efforts to preserve the family if the court determines:

126 (A) The parent has subjected the child, another child of the  
127 parent, or any other child residing in the same household or  
128 under the temporary or permanent custody of the parent to  
129 aggravated circumstances which include, but are not limited to,  
130 abandonment, torture, chronic abuse and sexual abuse;

131 (B) The parent has:

132 (i) Committed murder of the child's other parent, another  
133 child of the parent or any other child residing in the same  
134 household or under the temporary or permanent custody of the  
135 parent;

136 (ii) Committed voluntary manslaughter of the child's other  
137 parent, another child of the parent, or any other child residing  
138 in the same household or under the temporary or permanent  
139 custody of the parent;

140 (iii) Attempted or conspired to commit such a murder or  
141 voluntary manslaughter or been an accessory before or after the  
142 fact to either such crime; or

143 (iv) Committed a felonious assault that results in serious  
144 bodily injury to the child, the child's other parent, to another  
145 child of the parent, or any other child residing in the same  
146 household or under the temporary or permanent custody of the  
147 parent; or

148 (C) The parental rights of the parent to another child have  
149 been terminated involuntarily.

150 (b) As used in this section, "no reasonable likelihood that  
151 conditions of neglect or abuse can be substantially corrected"  
152 shall mean that, based upon the evidence before the court, the  
153 abusing adult or adults have demonstrated an inadequate  
154 capacity to solve the problems of abuse or neglect on their own

155 or with help. Such conditions shall be considered to exist in the  
156 following circumstances, which shall not be exclusive:

157 (1) The abusing parent or parents have habitually abused or  
158 are addicted to alcohol, controlled substances or drugs, to the  
159 extent that proper parenting skills have been seriously impaired  
160 and such person or persons have not responded to or followed  
161 through the recommended and appropriate treatment which  
162 could have improved the capacity for adequate parental  
163 functioning;

164 (2) The abusing parent or parents have willfully refused or  
165 are presently unwilling to cooperate in the development of a  
166 reasonable family case plan designed to lead to the child's  
167 return to their care, custody and control;

168 (3) The abusing parent or parents have not responded to or  
169 followed through with a reasonable family case plan or other  
170 rehabilitative efforts of social, medical, mental health or other  
171 rehabilitative agencies designed to reduce or prevent the abuse  
172 or neglect of the child, as evidenced by the continuation or  
173 insubstantial diminution of conditions which threatened the  
174 health, welfare or life of the child;

175 (4) The abusing parent or parents have abandoned the child;

176 (5) The abusing parent or parents have repeatedly or  
177 seriously injured the child physically or emotionally, or have  
178 sexually abused or sexually exploited the child, and the degree  
179 of family stress and the potential for further abuse and neglect  
180 are so great as to preclude the use of resources to mitigate or  
181 resolve family problems or assist the abusing parent or parents  
182 in fulfilling their responsibilities to the child;

183 (6) The abusing parent or parents have incurred emotional  
184 illness, mental illness or mental deficiency of such duration or  
185 nature as to render such parent or parents incapable of exercis-

186 ing proper parenting skills or sufficiently improving the  
187 adequacy of such skills; or

188 (7) The battered parent's parenting skills have been  
189 seriously impaired and said person has willfully refused or is  
190 presently unwilling or unable to cooperate in the development  
191 of a reasonable treatment plan or has not adequately responded  
192 to or followed through with the recommended and appropriate  
193 treatment plan.

194 (c) The court may, as an alternative disposition, allow the  
195 parents or custodians an improvement period not to exceed six  
196 months. During this period the court shall require the parent to  
197 rectify the conditions upon which the determination was based.  
198 The court may order the child to be placed with the parents, or  
199 any person found to be a fit and proper person, for the tempo-  
200 rary care of the child during the period. At the end of the  
201 period, the court shall hold a hearing to determine whether the  
202 conditions have been adequately improved and at the conclu-  
203 sion of the hearing shall make a further dispositional order in  
204 accordance with this section.

**§49-6-5b. When efforts to terminate parental rights required.**

1 (a) Except as provided in subsection (b) of this section, the  
2 department shall file or join in a petition or otherwise seek a  
3 ruling in any pending proceeding to terminate parental rights:

4 (1) If a child has been in foster care for fifteen of the most  
5 recent twenty-two months as determined by the earlier of the  
6 date of the first judicial finding that the child is subjected to  
7 abuse or neglect or the date which is sixty days after the child  
8 is removed from the home;

9 (2) If a court has determined the child is abandoned; or

10       (3) If a court has determined the parent has committed  
11 murder or voluntary manslaughter of another of his or her  
12 children or the other parent of his or her children; has attempted  
13 or conspired to commit such murder or voluntary manslaughter  
14 or has been an accessory before or after the fact of either crime;  
15 has committed unlawful or malicious wounding resulting in  
16 serious bodily injury to the child or to another of his or her  
17 children or to the other parent of his or her children; or the  
18 parental rights of the parent to a sibling have been terminated  
19 involuntarily.

20       (b) The department may determine not to file a petition to  
21 terminate parental rights when:

22       (1) At the option of the department, the child has been  
23 placed with a relative;

24       (2) The department has documented in the case plan made  
25 available for court review a compelling reason, including, but  
26 not limited to, the child's age and preference regarding termina-  
27 tion or the child's placement in custody of the department based  
28 on any proceedings initiated under article five of this chapter,  
29 that filing the petition would not be in the best interests of the  
30 child; or

31       (3) The department has not provided, when reasonable  
32 efforts to return a child to the family are required, the services  
33 to the child's family as the department deems necessary for the  
34 safe return of the child to the home.



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

*Stacy White*  
Chairman Senate Committee

*Rob Brey*  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

*Russell Johnson*  
Clerk of the Senate

*Suzanne M. Sawyer*  
Clerk of the House of Delegates

*Carl Roy Tomblin*  
President of the Senate

*Robert L. Taylor*  
Speaker of the House of Delegates

The within *is approved* this the *4<sup>th</sup>*  
day of *April* 2006.

*Paul S. Hancock*  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 27 2006

Time 4:15 pm