

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 484**

5 (SENATORS PALUMBO, LAIRD, TUCKER, EDGELL, WILLS, WELLS, KESSLER (MR.
6 PRESIDENT), KLEMPA, JENKINS, BEACH AND YOST, *original sponsors*)

7 _____
8 [Passed March 9, 2012; in effect ninety days from passage.]
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11
12 AN ACT to repeal §49-5-21 of the Code of West Virginia, 1931, as
13 amended; to repeal §49-6-5a of said code; to amend and reenact
14 §49-1-3 of said code; to amend and reenact §49-2-17 of said
15 code; to amend and reenact §49-5-13 of said code; to amend and
16 reenact §49-5D-2, §49-5D-3 and §49-5D-3a of said code; to
17 amend said code by adding thereto two new sections, designated
18 §49-5D-3b and §49-5D-3c; to amend and reenact §49-6-2, §49-6-
19 3, §49-6-5, §49-6-6, §49-6-8 and §49-6-12 of said code; to
20 amend and reenact §49-6A-5 of said code; to amend and reenact
21 §49-6D-3 of said code; to amend and reenact §49-7-1 of said
22 code; and to amend said code by adding thereto a new section,
23 designated §49-7-36, all relating generally to child welfare;
24 defining "court appointed special advocate program";

1 establishing a system of assistance from funds appropriated to
2 the Department of Health and Human Resources for facilitating
3 the adoption or legal guardianship of children who are
4 dependents of the department or of a child welfare agency
5 licenced to place children for adoption; providing when a
6 juvenile is ordered into out-of-state placement, the reasons
7 why the juvenile was not placed in state be included in the
8 court order; adding additional members to the
9 multidisciplinary team; providing a process for
10 multidisciplinary treatment planning in cases involving child
11 abuse and neglect; providing a process for multidisciplinary
12 treatment planning in cases involving status offense or
13 delinquency; increasing the continuing education hours
14 required for attorneys appointed in child abuse and neglect
15 cases; providing that reasonable efforts to preserve the
16 family are not required when a person is required by state or
17 federal law to register with a sex offender registry;
18 providing that the court may modify a dispositional order when
19 it finds a material change of circumstances has occurred and
20 such modification is in the child's best interests; clarifying
21 that the circuit court of origin has exclusive jurisdiction
22 over placement of a child in a child abuse and neglect case;
23 providing a process for permanency hearings and permanent
24 placement reviews; providing that any combination of

1 improvement periods cannot cause a child to be in foster care
2 more than fifteen months of the most recent twenty-two months
3 unless the court finds that it is in the child's best
4 interests; providing for modifications and requests for
5 expunging of records; requiring the secretary to promulgate
6 legislative rules; providing guidelines for unified child and
7 family case plans; confidentiality of records; and requiring
8 a quarterly status review hearing and yearly permanency
9 hearings for transitioning adults.

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

11 That §49-5-21 of the Code of West Virginia, 1931, as amended,
12 be repealed; that §49-6-5a of said code be repealed; that §49-1-3
13 of said code be amended and reenacted; that §49-2-17 of said code
14 be amended and reenacted; that §49-5-13 of said code be amended and
15 reenacted; that §49-5D-2, §49-5D-3 and §49-5D-3a of said code be
16 amended and reenacted; that said code be amended by adding thereto
17 two new sections, designated §49-5D-3b and §49-5D-3c; that §49-6-2,
18 §49-6-3, §49-6-5, §49-6-6, §49-6-8 and §49-6-12 of said code be
19 amended and reenacted; that §49-6A-5 of said code be amended and
20 reenacted; that §49-6D-3 of said code be amended and reenacted;
21 that §49-7-1 of said code be amended and reenacted; and that said
22 code be amended by adding thereto a new section, designated §49-7-
23 36, all to read as follows:

24 **ARTICLE 1. PURPOSES AND DEFINITIONS.**

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

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

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

8 (B) Sexual abuse or sexual exploitation;

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

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

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

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

21 (3) "Battered parent" means a parent, guardian or other
22 custodian who has been judicially determined not to have condoned
23 the abuse or neglect and has not been able to stop the abuse or
24 neglect of the child or children due to being the victim of

1 domestic violence as defined by section two hundred two, article
2 twenty-seven, chapter forty-eight of this code, which domestic
3 violence was perpetrated by the person or persons determined to
4 have abused or neglected the child or children.

5 (4) "Child abuse and neglect" or "child abuse or neglect"
6 means physical injury, mental or emotional injury, sexual abuse,
7 sexual exploitation, sale or attempted sale or negligent treatment
8 or maltreatment of a child by a parent, guardian or custodian who
9 is responsible for the child's welfare, under circumstances which
10 harm or threaten the health and welfare of the child.

11 (5) "Child abuse and neglect services" means social services
12 which are directed toward:

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

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

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

21 (D) In cases where children have been removed from their
22 families, providing services to the children and the families so as
23 to reunify such children with their families or some portion
24 thereof;

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

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

6 (6) "Child advocacy center (CAC)" means a community-based
7 organization that is a member in good standing with the West
8 Virginia Child Abuse Network, Inc., and is working to implement the
9 following program components:

10 (A) Child-appropriate/child-friendly facility: A child
11 advocacy center provides a comfortable, private, child-friendly
12 setting that is both physically and psychologically safe for
13 clients.

14 (B) Multidisciplinary team (MDT): A multidisciplinary team for
15 response to child abuse allegations includes representation from
16 the following: Law enforcement; child protective services;
17 prosecution; mental health; medical; victim advocacy; child
18 advocacy center.

19 (C) Organizational capacity: A designated legal entity
20 responsible for program and fiscal operations has been established
21 and implements basic sound administrative practices.

22 (D) Cultural competency and diversity: The CAC promotes
23 policies, practices and procedures that are culturally competent.
24 Cultural competency is defined as the capacity to function in more

1 than one culture, requiring the ability to appreciate, understand
2 and interact with members of diverse populations within the local
3 community.

4 (E) Forensic interviews: Forensic interviews are conducted in
5 a manner which is of a neutral, fact-finding nature and coordinated
6 to avoid duplicative interviewing.

7 (F) Medical evaluation: Specialized medical evaluation and
8 treatment are to be made available to CAC clients as part of the
9 team response, either at the CAC or through coordination and
10 referral with other specialized medical providers.

11 (G) Therapeutic intervention: Specialized mental health
12 services are to be made available as part of the team response,
13 either at the CAC or through coordination and referral with other
14 appropriate treatment providers.

15 (H) Victim support/advocacy: Victim support and advocacy are
16 to be made available as part of the team response, either at the
17 CAC or through coordination with other providers, throughout the
18 investigation and subsequent legal proceedings.

19 (I) Case review: Team discussion and information sharing
20 regarding the investigation, case status and services needed by the
21 child and family are to occur on a routine basis.

22 (J) Case tracking: CACs must develop and implement a system
23 for monitoring case progress and tracking case outcomes for team
24 components: *Provided*, That a child advocacy center may establish a

1 safe exchange location for children and families who have a
2 parenting agreement or an order providing for visitation or custody
3 of the children that require a safe exchange location.

4 (7) "Court appointed special advocate (CASA) program" means a
5 community organization that screens, trains and supervises CASA
6 volunteers to advocate for the best interests of children who are
7 involved in abuse and neglect proceedings. Court appointed special
8 advocate programs will be operated under the following guidelines:

9 (A) Standards: CASA programs shall be members in good standing
10 with the West Virginia Court Appointed Special Advocate
11 Association, Inc., and the National Court Appointed Special
12 Advocates Association and adhere to all standards set forth by
13 these entities.

14 (B) Organizational capacity: A designated legal entity
15 responsible for program and fiscal operations has been established
16 and implements basic sound administrative practice.

17 (C) Cultural competency and diversity: CASA programs promote
18 policies, practices and procedures that are culturally competent.
19 "Cultural competency" is defined as the capacity to function in
20 more than one culture, requiring the ability to appreciate,
21 understand and interact with members of diverse populations within
22 the local community.

23 (D) Case management: CASA programs must utilize a uniform case
24 management system to monitor case progress and track outcomes.

25 (E) Case review: CASA volunteers meet with CASA staff on a
26 routine basis to discuss case status and outcomes.

1 (F) Training: Court appointed special advocates shall serve as
2 volunteers without compensation and shall receive training
3 consistent with state and nationally developed standards.

4 (8) "Imminent danger to the physical well being of the child"
5 means an emergency situation in which the welfare or the life of
6 the child is threatened. Such emergency situation exists when
7 there is reasonable cause to believe that any child in the home is
8 or has been sexually abused or sexually exploited, or reasonable
9 cause to believe that the following conditions threaten the health
10 or life of any child in the home:

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

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

16 (C) Nutritional deprivation;

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

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

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

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

23 (H) The parent, guardian or custodian abuse of alcohol or
24 drugs or other controlled substance as defined in section one
25 hundred one, article one, chapter sixty-a of this code, has
26 impaired his or her parenting skills to a degree as to pose an

1 imminent risk to a child's health or safety.

2 (9) "Legal guardianship" means the permanent relationship
3 between a child and caretaker, established by order of the circuit
4 court having jurisdiction over the child, pursuant to the
5 provisions of this chapter and chapter forty-eight of this code.

6 (10) "Multidisciplinary team" means a group of professionals
7 and paraprofessionals representing a variety of disciplines who
8 interact and coordinate their efforts to identify, diagnose and
9 treat specific cases of child abuse and neglect. Multidisciplinary
10 teams may include, but are not limited to, medical, educational,
11 child care and law-enforcement personnel, social workers,
12 psychologists and psychiatrists. Their goal is to pool their
13 respective skills in order to formulate accurate diagnoses and to
14 provide comprehensive coordinated treatment with continuity and
15 followup for both parents and children. "Community team" means a
16 multidisciplinary group which addresses the general problem of
17 child abuse and neglect in a given community and may consist of
18 several multidisciplinary teams with different functions.

19 (11) (A) "Neglected child" means a child:

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

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

4 (B) "Neglected child" does not mean a child whose education is
5 conducted within the provisions of section one, article eight,
6 chapter eighteen of this code.

7 (12) "Parent" means an individual defined as a parent by law
8 or on the basis of a biological relationship, marriage to a person
9 with a biological relationship, legal adoption or other recognized
10 grounds.

11 (13) "Parental rights" means any and all rights and duties
12 regarding a parent to a minor child, including, but not limited to,
13 custodial rights and visitational rights and rights to participate
14 in the decisions affecting a minor child.

15 (14) "Parenting skills" means a parent's competencies in
16 providing physical care, protection, supervision and psychological
17 support appropriate to a child's age and state of development.

18 (15) "Sexual abuse" means:

19 (A) As to a child who is less than sixteen years of age, any
20 of the following acts which a parent, guardian or custodian shall
21 engage in, attempt to engage in or knowingly procure another person
22 to engage in, with such child, notwithstanding the fact that the
23 child may have willingly participated in such conduct or the fact
24 that the child may have suffered no apparent physical injury or
25 mental or emotional injury as a result of such conduct:

26 (i) Sexual intercourse;

1 (ii) Sexual intrusion; or

2 (iii) Sexual contact;

3 (B) As to a child who is sixteen years of age or older, any of
4 the following acts which a parent, guardian or custodian shall
5 engage in, attempt to engage in or knowingly procure another person
6 to engage in, with such child, notwithstanding the fact that the
7 child may have consented to such conduct or the fact that the child
8 may have suffered no apparent physical injury or mental or
9 emotional injury as a result of such conduct:

10 (i) Sexual intercourse;

11 (ii) Sexual intrusion; or

12 (iii) Sexual contact;

13 (C) Any conduct whereby a parent, guardian or custodian
14 displays his or her sex organs to a child, or procures another
15 person to display his or her sex organs to a child, for the purpose
16 of gratifying the sexual desire of the parent, guardian or
17 custodian, of the person making such display, or of the child, or
18 for the purpose of affronting or alarming the child.

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

22 (17) "Sexual exploitation" means an act whereby:

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

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

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

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

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

16 (21) "Serious physical abuse" means bodily injury which creates
17 a substantial risk of death, which causes serious or prolonged
18 disfigurement, prolonged impairment of health or prolonged loss or
19 impairment of the function of any bodily organ.

20 (22) "Siblings" means children who have at least one
21 biological parent in common or who have been legally adopted by the
22 same parents or parent.

23 (23) "Time-limited reunification services" means individual,
24 group and family counseling, inpatient, residential or outpatient
25 substance abuse treatment services, mental health services,
26 assistance to address domestic violence, services designed to

1 provide temporary child care and therapeutic services for families,
2 including crisis nurseries and transportation to or from any such
3 services, provided during fifteen of the most recent twenty-two
4 months a child has been in foster care, as determined by the
5 earlier date of the first judicial finding that the child is
6 subjected to abuse or neglect, or the date which is sixty days
7 after the child is removed from home.

8 **ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF**
9 **CHILDREN.**

10 **§49-2-17. Subsidized adoption and legal guardianship.**

11 (a) From funds appropriated to the Department of Health and
12 Human Resources, the secretary shall establish a system of
13 assistance for facilitating the adoption or legal guardianship of
14 children. An adoption subsidy shall be available for children who
15 are legally free for adoption and who are dependents of the
16 department or a child welfare agency licensed to place children for
17 adoption. A legal guardianship subsidy shall not require the
18 surrender or termination of parental rights. For either subsidy,
19 the children must be in special circumstances because one or more
20 of the following conditions inhibit their adoption or legal
21 guardianship placement:

- 22 (1) They have a physical or mental disability;
23 (2) They are emotionally disturbed;
24 (3) They are older children;
25 (4) They are a part of a sibling group; or

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

2 (b) The department shall provide assistance in the form of
3 subsidies or other services to parents who are found and approved
4 for adoption or legal guardianship of a child certified as eligible
5 for subsidy by the department, but before the final decree of
6 adoption or order of legal guardianship is entered, there must be
7 a written agreement between the family entering into the subsidized
8 adoption or legal guardianship and the department. Adoption or
9 legal guardianship subsidies in individual cases may commence with
10 the adoption or legal guardianship placement, and will vary with
11 the needs of the child as well as the availability of other
12 resources to meet the child's needs. The subsidy may be for
13 special services only, or for money payments, and either for a
14 limited period, or for a long term, or for any combination of the
15 foregoing. The specific financial terms of the subsidy shall be
16 included in the agreement between the department and the adoptive
17 parents or legal guardians. The agreement may recognize and
18 provide for direct payment by the department of attorney's fees to
19 an attorney representing the adoptive parent. The amount of the
20 time-limited or long-term subsidy may in no case exceed that which
21 would be allowable from time to time for such child under foster
22 family care or, in the case of a special service, the reasonable
23 fee for the service rendered. In addition, the department shall
24 provide either Medicaid or other health insurance coverage for any
25 special needs child for whom there is an adoption or legal
26 guardianship assistance agreement between the department and the

1 adoptive parent or legal guardian and who the department determines
2 cannot be placed with an adoptive parent or legal guardian without
3 medical assistance because the child has special needs for medical,
4 mental health or rehabilitative care.

5 (c) After reasonable efforts have been made without the use of
6 subsidy and no appropriate adoptive family or legal guardian has
7 been found for the child, the department shall certify the child as
8 eligible for a subsidy in the event of adoption or a legal
9 guardianship: *Provided*, that reasonable efforts to place a child
10 without a subsidy shall not be required if it is in the best
11 interest of the child because of such factors as the existence of
12 significant emotional ties developed between the child and the
13 prospective parent or guardian while in care as a foster child.

14 (d) If the child is the dependent of a voluntary licensed
15 child-placing agency, that agency shall present to the department
16 evidence of the inability to place the child for adoption or legal
17 guardianship without the use of subsidy or evidence that such
18 efforts would not be in the best interests of the child. In no
19 event shall the value of the services and assistance provided by
20 the department under an agreement pursuant to this section exceed
21 the value of assistance available to foster families in similar
22 circumstances. All records regarding subsidized adoptions or legal
23 guardianships shall be held in confidence; however, records
24 regarding the payment of public funds for subsidized adoptions or
25 legal guardianships shall be available for public inspection

1 provided they do not directly or indirectly identify any child or
2 persons receiving funds for such child.

3 **ARTICLE 5. JUVENILE PROCEEDINGS.**

4 **§49-5-13. Disposition of juvenile delinquents; appeal.**

5 (a) In aid of disposition of juvenile delinquents, the
6 juvenile probation officer assigned to the court shall, upon
7 request of the court, make an investigation of the environment of
8 the juvenile and the alternative dispositions possible. The court,
9 upon its own motion, or upon request of counsel, may order a
10 psychological examination of the juvenile. The report of such
11 examination and other investigative and social reports shall not be
12 made available to the court until after the adjudicatory hearing.
13 Unless waived, copies of the report shall be provided to counsel
14 for the petitioner and counsel for the juvenile no later than
15 seventy-two hours prior to the dispositional hearing.

16 (b) Following the adjudication, the court shall conduct the
17 dispositional proceeding, giving all parties an opportunity to be
18 heard. In disposition the court shall not be limited to the relief
19 sought in the petition and shall, in electing from the following
20 alternatives, consider the best interests of the juvenile and the
21 welfare of the public:

22 (1) Dismiss the petition;

23 (2) Refer the juvenile and the juvenile's parent or custodian
24 to a community agency for needed assistance and dismiss the
25 petition;

1 (3) Upon a finding that the juvenile is in need of extra-
2 parental supervision: (A) Place the juvenile under the supervision
3 of a probation officer of the court or of the court of the county
4 where the juvenile has his or her usual place of abode or other
5 person while leaving the juvenile in custody of his or her parent
6 or custodian; and (B) prescribe a program of treatment or therapy
7 or limit the juvenile's activities under terms which are reasonable
8 and within the child's ability to perform, including participation
9 in the litter control program established pursuant to section
10 three, article fifteen-a, chapter twenty-two of this code or other
11 appropriate programs of community service;

12 (4) Upon a finding that a parent or custodian is not willing
13 or able to take custody of the juvenile, that a juvenile is not
14 willing to reside in the custody of his or her parent or custodian
15 or that a parent or custodian cannot provide the necessary
16 supervision and care of the juvenile, the court may place the
17 juvenile in temporary foster care or temporarily commit the
18 juvenile to the department or a child welfare agency. The court
19 order shall state that continuation in the home is contrary to the
20 best interest of the juvenile and why; and whether or not the
21 department made a reasonable effort to prevent the placement or
22 that the emergency situation made such efforts unreasonable or
23 impossible. Whenever the court transfers custody of a youth to the
24 department, an appropriate order of financial support by the
25 parents or guardians shall be entered in accordance with section

1 five, article seven of this chapter and guidelines promulgated by
2 the Supreme Court of Appeals;

3 (5) Upon a finding that the best interests of the juvenile or
4 the welfare of the public require it, and upon an adjudication of
5 delinquency pursuant to subdivision (1), section four, article one
6 of this chapter, the court may commit the juvenile to the custody
7 of the Director of the Division of Juvenile Services for placement
8 in a juvenile services facility for the treatment, instruction and
9 rehabilitation of juveniles: *Provided*, That the court maintains
10 discretion to consider alternative sentencing arrangements.
11 Notwithstanding any provision of this code to the contrary, in the
12 event that the court determines that it is in the juvenile's best
13 interests or required by the public welfare to place the juvenile
14 in the custody of the Division of Juvenile Services, the court
15 shall provide the Division of Juvenile Services with access to all
16 relevant court orders and records involving the underlying offense
17 or offenses for which the juvenile was adjudicated delinquent,
18 including sentencing and presentencing reports and evaluations, and
19 provide the division with access to school records, psychological
20 reports and evaluations, medical reports and evaluations or any
21 other such records as may be in the court's possession as would
22 enable the Division of Juvenile Services to better assess and
23 determine the appropriate counseling, education and placement needs
24 for the juvenile offender. Commitments shall not exceed the
25 maximum term for which an adult could have been sentenced for the
26 same offense and any such maximum allowable sentence to be served

1 in a juvenile correctional facility may take into account any time
2 served by the juvenile in a detention center pending adjudication,
3 disposition or transfer. The order shall state that continuation
4 in the home is contrary to the best interests of the juvenile and
5 why; and whether or not the state department made a reasonable
6 effort to prevent the placement or that the emergency situation
7 made such efforts unreasonable or impossible; or

8 (6) After a hearing conducted under the procedures set out in
9 subsections (c) and (d), section four, article five, chapter
10 twenty-seven of this code, commit the juvenile to a mental health
11 facility in accordance with the juvenile's treatment plan; the
12 director of the mental health facility may release a juvenile and
13 return him or her to the court for further disposition. The order
14 shall state that continuation in the home is contrary to the best
15 interests of the juvenile and why; and whether or not the state
16 department made a reasonable effort to prevent the placement or
17 that the emergency situation made such efforts unreasonable or
18 impossible.

19 (c) In any case in which the court decides to order the
20 juvenile placed in an out-of-state facility or program, it shall
21 set forth in the order directing the placement the reasons the
22 juvenile was not placed in an in-state facility or program.

23 (d) The disposition of the juvenile shall not be affected by
24 the fact that the juvenile demanded a trial by jury or made a plea
25 of denial. Any dispositional order is subject to appeal to the
26 Supreme Court of Appeals.

1 (e) Following disposition, the court shall inquire whether the
2 juvenile wishes to appeal and the response shall be transcribed; a
3 negative response shall not be construed as a waiver. The evidence
4 shall be transcribed as soon as practicable and made available to
5 the juvenile or his or her counsel, if the same is requested for
6 purposes of further proceedings. A judge may grant a stay of
7 execution pending further proceedings.

8 (f) Notwithstanding any other provision of this code to the
9 contrary, if a juvenile charged with delinquency under this chapter
10 is transferred to adult jurisdiction and there tried and convicted,
11 the court may make its disposition in accordance with this section
12 in lieu of sentencing such person as an adult.

13 **ARTICLE 5D. MULTIDISCIPLINARY TEAMS.**

14 **§49-5D-2. Multidisciplinary investigative teams; establishment;**
15 **procedures; coordination between agencies.**

16 (a) The prosecuting attorney shall establish a
17 multidisciplinary investigative team in each county. The
18 multidisciplinary team shall be headed and directed by the
19 prosecuting attorney or his or her designee and shall include as
20 permanent members the prosecuting attorney or his or her designee,
21 a local child protective services caseworker from the Department of
22 Health and Human Resources; a local law-enforcement officer
23 employed by a law-enforcement agency in the county; a child
24 advocacy center representative, where available; a health care
25 provider with pediatric and child abuse expertise, where available;
26 a mental health professional with pediatric and child abuse

1 expertise, where available; an educator and a representative from
2 a licensed domestic violence program serving the county. The
3 Department of Health and Human Resources and any local law-
4 enforcement agency or agencies selected by the prosecuting attorney
5 shall appoint their representatives to the team by submitting a
6 written designation of the team to the prosecuting attorney of each
7 county within thirty days of the prosecutor's request that the
8 appointment be made. Within fifteen days of the appointment, the
9 prosecuting attorney shall notify the chief judge of each circuit
10 within which the county is situated of the names of the
11 representatives so appointed. Any other person or any other
12 appointee of an agency who may contribute to the team's efforts to
13 assist a minor child as may be determined by the permanent members
14 of the team may also be appointed as a member of the team by the
15 prosecutor with notification to the chief judge.

16 (b) Any permanent member of the multidisciplinary
17 investigative team shall refer all cases of accidental death of any
18 child reported to their agency and all cases when a child dies
19 while in the custody of the state for investigation and review by
20 the team. The multidisciplinary investigative team shall meet at
21 regular intervals at least once every calendar month.

22 (c) The investigative team shall be responsible for
23 coordinating or cooperating in the initial and ongoing
24 investigation of all civil and criminal allegations pertinent to
25 cases involving child sexual assault, child sexual abuse, child
26 abuse and neglect and shall make a recommendation to the county

1 prosecuting attorney as to the initiation or commencement of a
2 civil petition and/or criminal prosecution.

3 (d) State, county and local agencies shall provide the
4 multidisciplinary investigative team with any information requested
5 in writing by the team as allowable by law or upon receipt of a
6 certified copy of the circuit court's order directing said agencies
7 to release information in its possession relating to the child.
8 The team shall assure that all information received and developed
9 in connection with the provisions of this article remains
10 confidential. For purposes of this section, the term
11 "confidential" shall be construed in accordance with the provisions
12 of section one, article seven of this chapter.

13 **49-5D-3. Multidisciplinary treatment planning process.**

14 (a) (1) A multidisciplinary treatment planning process for
15 cases initiated pursuant to articles five and six of this chapter
16 shall be established within each county of the state, either
17 separately or in conjunction with a contiguous county, by the
18 secretary of the department with advice and assistance from the
19 prosecutor's advisory council as set forth in section four, article
20 four, chapter seven of this code. The Division of Juvenile
21 Services shall establish a similar treatment planning process for
22 delinquency cases in which the juvenile has been committed to its
23 custody, including those cases in which the juvenile has been
24 committed for examination and diagnosis.

25 (2) The provisions of this section do not require a
26 multidisciplinary team meeting to be held prior to temporarily

1 placing a child or juvenile out-of-home under exigent circumstances
2 or upon a court order placing a juvenile in a facility operated by
3 the Division of Juvenile Services.

4 (b) The case manager in the Department of Health and Human
5 Resources for the child, family or juvenile or the case manager in
6 the Division of Juvenile Services for a juvenile shall convene a
7 treatment team in each case when it is required pursuant to this
8 article.

9 Prior to disposition, in each case in which a treatment
10 planning team has been convened, the team shall advise the court as
11 to the types of services the team has determined are needed and the
12 type of placement, if any, which will best serve the needs of the
13 child. If the team determines that an out-of-home placement will
14 best serve the needs of the child, the team shall first consider
15 placement with appropriate relatives then with foster care homes,
16 facilities or programs located within the state. The team may only
17 recommend placement in an out-of-state facility if it concludes,
18 after considering the best interests and overall needs of the
19 child, that there are no available and suitable in-state facilities
20 which can satisfactorily meet the specific needs of the child.

21 Any person authorized by the provisions of this chapter to
22 convene a multidisciplinary team meeting may seek and receive an
23 order of the circuit court setting such meeting and directing
24 attendance. Members of the multidisciplinary team may participate
25 in team meetings by telephone or video conferencing: *Provided*, That
26 the provisions of this subsection do not prevent the respective

1 agencies from designating a person other than the case manager as
2 a facilitator for treatment team meetings.

3 (c) The treatment team shall coordinate its activities and
4 membership with local family resource networks and coordinate with
5 other local and regional child and family service planning
6 committees to assure the efficient planning and delivery of child
7 and family services on a local and regional level.

8 (d) The multidisciplinary treatment team shall be afforded
9 access to information in the possession of the Department of Health
10 and Human Services, Division of Juvenile Services, law-enforcement
11 agencies and other state, county and local agencies; and the
12 agencies shall cooperate in the sharing of information, as may be
13 provided in sections three(d) and six, article five-D and section
14 one, article seven, all of chapter forty-nine, and any other
15 relevant provision of law. Any multidisciplinary team member who
16 acquires confidential information shall not disclose such
17 information except as permitted by the provisions of this code or
18 court rules.

19 **§49-5D-3a. Recommendation of team to the court; hearing**
20 **requirement; required findings.**

21 (a) In any case in which a multidisciplinary treatment team
22 develops an individualized service plan for a child or family
23 pursuant to the provisions of this article, the court shall review
24 the proposed service plan to determine if implementation of the
25 plan is in the child's best interests. If the multidisciplinary
26 team cannot agree on a plan or if the court determines not to adopt

1 the team's recommendations, it shall, upon motion or sua sponte,
2 schedule and hold within ten days of such determination, and prior
3 to the entry of an order placing the child in the custody of the
4 department or in an out-of-home setting, a hearing to consider
5 evidence from the team as to its rationale for the proposed service
6 plan. If, after a hearing held pursuant to the provisions of this
7 section, the court does not adopt the team's recommended service
8 plan, it shall make specific written findings as to why the team's
9 recommended service plan was not adopted.

10 (b) In any case in which the court decides to order the child
11 placed in an out-of-state facility or program it shall set forth in
12 the order directing the placement the reasons why the child was not
13 placed in an in-state facility or program.

14 (c) Any member of the multidisciplinary treatment team who
15 disagrees with recommendations of the team may inform the court of
16 his or her own recommendations and objections to the team's
17 recommendations. The recommendations and objections of the
18 dissenting team member may be made in a hearing on the record, made
19 in writing and served upon each team member and filed with the
20 court and indicated in the case plan, or both made in writing and
21 indicated in the case plan. Upon receiving objections, the court
22 will conduct a hearing pursuant to paragraph (a) of this section.

23 **§49-5D-3b. Multidisciplinary treatment planning process involving**
24 **child abuse and neglect.**

25 (a) Within thirty days of the initiation of a judicial
26 proceeding pursuant to article six of this chapter, the Department

1 of Health and Human Services shall convene a multidisciplinary
2 treatment team to assess, plan and implement a comprehensive,
3 individualized service plan for children who are victims of abuse
4 or neglect and their families. The multidisciplinary team shall
5 obtain and utilize any assessments for the children or the adult
6 respondents that it deems necessary to assist in the development of
7 such a plan.

8 (b) In a case initiated pursuant to article six of this
9 chapter, the treatment team shall consist of the child or family's
10 case manager in the Department of Health and Human Resources, the
11 adult respondent or respondents, the child's parent or parents,
12 guardians, any copetitioners, custodial relatives of the child,
13 foster or preadoptive parents, any attorney representing an adult
14 respondent or other member of the treatment team, the child's
15 counsel or the guardian ad litem, the prosecuting attorney or his
16 or her designee, a member of a child advocacy center when the child
17 has been processed through the child advocacy center program or
18 programs or it is otherwise appropriate that a member of the child
19 advocacy center participate, any court-appointed special advocate
20 assigned to a case, any other person entitled to notice and the
21 right to be heard, an appropriate school official and any other
22 person or agency representative who may assist in providing
23 recommendations for the particular needs of the child and family,
24 including domestic violence service providers. The child may
25 participate in multidisciplinary treatment team meetings if the
26 child's participation is deemed appropriate by the

1 multidisciplinary treatment team. Unless otherwise ordered by the
2 court, a party whose parental rights have been terminated and his
3 or her attorney shall not be given notice of a multidisciplinary
4 treatment team meeting and does not have the right to participate
5 in any treatment team meeting.

6 (c) Prior to disposition in each case which a treatment
7 planning team has been convened, the team shall advise the court as
8 to the types of services the team has determined are needed and the
9 type of placement, if any, which will best serve the needs of the
10 child. If the team determines that an out-of-home placement will
11 best serve the needs of the child, the team shall first consider
12 placement with appropriate relatives then with foster care homes,
13 facilities or programs located within the state. The team may only
14 recommend placement in an out-of-state facility if it concludes,
15 after considering the best interests and overall needs of the
16 child, that there are no available and suitable in-state facilities
17 which can satisfactorily meet the specific needs of the child.

18 (d) The multidisciplinary treatment team shall submit written
19 reports to the court as required by the rules governing this type
20 of proceeding or by the court, and shall meet as often as deemed
21 necessary but at least every three months until the case is
22 dismissed from the docket of the court. The multidisciplinary
23 treatment team shall be available for status conferences and
24 hearings as required by the court.

25 (e) If a respondent or copetitioner admits the underlying
26 allegations of child abuse or neglect, or both abuse and neglect,

1 in the multidisciplinary treatment planning process, his or her
2 statements not be used in any subsequent criminal proceeding
3 against him or her, except for perjury or false swearing.

4 **§49-5D-3c. Multidisciplinary treatment process for status**
5 **offenders or delinquents.**

6 (a) (1) When a juvenile is adjudicated as a status offender
7 pursuant to section eleven-d, article five of this chapter, the
8 Department of Health and Human Resources shall promptly convene a
9 multidisciplinary treatment team and conduct an assessment,
10 utilizing a standard uniform comprehensive assessment instrument or
11 protocol, to determine the juvenile's mental and physical
12 condition, maturity and education level, home and family
13 environment, rehabilitative needs and recommended service plan.
14 Upon completion of the assessment, the treatment team shall prepare
15 and implement a comprehensive, individualized service plan for the
16 juvenile.

17 (2) When a juvenile is adjudicated as a delinquent or has been
18 granted an improvement period pursuant to section nine, article
19 five of this chapter, the court, either upon its own motion or
20 motion of a party, may require the Department of Health and Human
21 Resources to convene a multidisciplinary treatment team and conduct
22 an assessment, utilizing a standard uniform comprehensive
23 assessment instrument or protocol, to determine the juvenile's
24 mental and physical condition, maturity and education level, home
25 and family environment, rehabilitative needs and recommended
26 service plan. A referral to the Department of Health and Human

1 Resources to convene a multidisciplinary treatment team and to
2 conduct such an assessment shall be made when the court is
3 considering placing the juvenile in the department's custody or
4 placing the juvenile out-of-home at the department's expense
5 pursuant to section thirteen, article five of this chapter. In any
6 delinquency proceeding in which the court requires the Department
7 of Health and Human Resources to convene a multidisciplinary
8 treatment team, the probation officer shall notify the department
9 at least fifteen working days before the court proceeding in order
10 to allow the department sufficient time to convene and develop an
11 individualized service plan for the juvenile.

12 (3) When a juvenile has been adjudicated and committed to the
13 custody of the Director of the Division of Juvenile Services,
14 including those cases in which the juvenile has been committed for
15 examination and diagnosis, the Division of Juvenile Services shall
16 promptly convene a multidisciplinary treatment team and conduct an
17 assessment, utilizing a standard uniform comprehensive assessment
18 instrument or protocol, to determine the juvenile's mental and
19 physical condition, maturity and education level, home and family
20 environment, rehabilitative needs and recommended service plan.
21 Upon completion of the assessment, the treatment team shall prepare
22 and implement a comprehensive, individualized service plan for the
23 juvenile.

24 (4) (A) The rules of juvenile procedure shall govern the
25 procedure for obtaining an assessment of a juvenile, preparing an

1 individualized service plan and submitting the plan and assessment
2 to the court.

3 (B) In juvenile proceedings conducted pursuant to article five
4 of this chapter, the treatment team shall consist of the juvenile,
5 the juvenile's case manager in the Department of Health and Human
6 Resources or the Division of Juvenile Services, the juvenile's
7 parent or parents, guardian or guardians or custodial relatives,
8 the juvenile's attorney, any attorney representing a member of the
9 treatment team, the prosecuting attorney or his or her designee, an
10 appropriate school official and any other person or agency
11 representative who may assist in providing recommendations for the
12 particular needs of the juvenile and family, including domestic
13 violence service providers. In delinquency proceedings, the
14 probation officer shall be a member of a treatment team. When
15 appropriate, the juvenile case manager in the Department of Health
16 and Human Resources and the Division of Juvenile Services shall
17 cooperate in conducting multidisciplinary treatment team meetings
18 when it is in the juvenile's best interest.

19 (C) Prior to disposition, in each case in which a treatment
20 planning team has been convened, the team shall advise the court as
21 to the types of services the team has determined are needed and
22 type of placement, if any, which will best serve the needs of the
23 child. If the team determines that an out-of-home placement will
24 best serve the needs of the child, the team shall first consider
25 placement at facilities or programs located within the state. The
26 team may only recommend placement in an out-of-state facility if it

1 concludes, after considering the best interests and overall needs
2 of the child, that there are no available and suitable in-state
3 facilities which can satisfactorily meet the specific needs of the
4 child.

5 (D) The multidisciplinary treatment team shall submit written
6 reports to the court as required by applicable law or by the court,
7 shall meet with the court at least every three months, as long as
8 the juvenile remains in the legal or physical custody of the state,
9 and shall be available for status conferences and hearings as
10 required by the court.

11 (E) In any case in which a juvenile has been placed out of his
12 or her home except for a temporary placement in a shelter or
13 detention center, the multidisciplinary treatment team shall
14 cooperate with the state agency in whose custody the juvenile is
15 placed to develop an after-care plan. The rules of juvenile
16 procedure and section twenty, article five, chapter forty-nine of
17 the code shall govern the development of an after-care plan for a
18 juvenile, the submission of the plan to the court and any objection
19 to the after-care plan.

20 (F) If a juvenile respondent admits the underlying allegations
21 of the case initiated pursuant to article five, chapter forty-nine
22 of this code in the multidisciplinary treatment planning process,
23 his or her statements shall not be used in any juvenile or criminal
24 proceedings against the juvenile, except for perjury or false
25 swearing.

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

1 **§49-6-2. Petition to court when child believed neglected or abused**

2 **-- Right to counsel; improvement period; hearing;**
3 **priority of proceeding; transcript.**

4 (a) In any proceeding under the provisions of this article,
5 the child, his or her or parents and his or her legally established
6 custodian or other persons standing in loco parentis to him or her
7 shall have the right to be represented by counsel at every stage of
8 the proceedings and shall be informed by the court of their right
9 to be so represented and that if they cannot pay for the services
10 of counsel, that counsel will be appointed. Counsel of the child
11 shall be appointed in the initial order. If the order gives
12 physical custody of the child to the state, the initial order shall
13 appoint counsel for the parents or, if the parents are separated or
14 divorced, the parents or parent or other person or persons standing
15 in loco parentis who had physical custody of the child for the
16 majority of the time in the period immediately preceding the
17 petition: *Provided*, That such representation shall only continue
18 after the first appearance if the parent or other persons standing
19 in loco parentis cannot pay for the services of counsel. Counsel
20 for other parties shall only be appointed upon request for
21 appointment of counsel. If the requesting parties have not
22 retained counsel and cannot pay for the services of counsel, the
23 court shall, by order entered of record, appoint an attorney or
24 attorneys to represent the other party or parties and so inform the
25 parties. Under no circumstances may the same attorney represent
26 both the child and the other party or parties, nor shall the same

1 attorney represent both parents or custodians. However, one
2 attorney may represent both parents or custodians where both
3 parents or guardians consent to this representation after the
4 attorney fully discloses to the client the possible conflict and
5 where the attorney assures the court that she or he is able to
6 represent each client without impairing her or his professional
7 judgment; however, if more than one child from a family is involved
8 in the proceeding, one attorney may represent all the children. A
9 parent who has been judicially determined to be battered shall be
10 entitled to his or her own attorney. The court may allow to each
11 attorney so appointed a fee in the same amount which appointed
12 counsel can receive in felony cases. Effective July 1, 2012, any
13 attorney appointed pursuant to this section shall receive a minimum
14 of eight hours of continuing legal education training per reporting
15 period on child abuse and neglect procedure and practice. In
16 addition to this requirement, after July 1, 2013, any attorney
17 appointed to represent a child must first complete training on
18 representation of children that is approved by the administrative
19 office of the Supreme Court of Appeals. The Supreme Court of
20 Appeals shall develop procedures for approval and certification of
21 training required under this section by July 1, 2012: *Provided,*
22 *however,* That where no attorney who has completed this training is
23 available for such appointment, the court shall appoint a competent
24 attorney with demonstrated knowledge of child welfare law to
25 represent the parent or child. Any attorney appointed pursuant to

1 this section shall perform all duties required as an attorney
2 licensed to practice law in the State of West Virginia.

3 (b) In any proceeding brought pursuant to the provisions of
4 this article, the court may grant any respondent an improvement
5 period in accord with the provisions of this article. During such
6 period, the court may require temporary custody with a responsible
7 person which has been found to be a fit and proper person for the
8 temporary custody of the child or children or the state department
9 or other agency during the improvement period. An order granting
10 such improvement period shall require the department to prepare and
11 submit to the court a family case plan in accordance with the
12 provisions of section three, article six-d of this chapter.

13 (c) In any proceeding pursuant to the provisions of this
14 article, the party or parties having custodial or other parental
15 rights or responsibilities to the child shall be afforded a
16 meaningful opportunity to be heard, including the opportunity to
17 testify and to present and cross-examine witnesses. The petition
18 shall not be taken as confessed. A transcript or recording shall
19 be made of all proceedings unless waived by all parties to the
20 proceeding. The rules of evidence shall apply. Where relevant,
21 the court shall consider the efforts of the state department to
22 remedy the alleged circumstances. At the conclusion of the
23 hearing, the court shall make a determination based upon the
24 evidence and shall make findings of fact and conclusions of law as
25 to whether such child is abused or neglected and, if applicable,
26 whether the parent, guardian, or custodian is a battered parent,

1 all of which shall be incorporated into the order of the court.
2 The findings must be based upon conditions existing at the time of
3 the filing of the petition and proven by clear and convincing
4 proof.

5 (d) Any petition filed and any proceeding held under the
6 provisions of this article shall, to the extent practicable, be
7 given priority over any other civil action before the court, except
8 proceedings under article two-a, chapter forty-eight of this code
9 and actions in which trial is in progress. Any petition filed
10 under the provisions of this article shall be docketed immediately
11 upon filing. Any hearing to be held at the end of an improvement
12 period and any other hearing to be held during any proceedings
13 under the provisions of this article shall be held as nearly as
14 practicable on successive days and, with respect to said hearing to
15 be held at the end of an improvement period, shall be held as close
16 in time as possible after the end of said improvement period and
17 shall be held within sixty days of the termination of such
18 improvement period. (e) Following the court's determination, it
19 shall be inquired of the parents or custodians whether or not
20 appeal is desired and the response transcribed. A negative
21 response shall not be construed as a waiver. The evidence shall be
22 transcribed and made available to the parties or their counsel as
23 soon as practicable, if the same is required for purposes of
24 further proceedings. If an indigent person intends to pursue
25 further proceedings, the court reporter shall furnish a transcript

1 of the hearing without cost to the indigent person if an affidavit
2 is filed stating that he or she cannot pay therefor.

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

4 **-- Temporary custody.**

5 (a) Upon the filing of a petition, the court may order that
6 the child alleged to be an abused or neglected child be delivered
7 for not more than ten days into the custody of the state department
8 or a responsible person found by the court to be a fit and proper
9 person for the temporary care of the child pending a preliminary
10 hearing, if it finds that:

11 (1) There exists imminent danger to the physical well being of
12 the child; and

13 (2) There are no reasonably available alternatives to removal
14 of the child, including, but not limited to, the provision of
15 medical, psychiatric, psychological or homemaking services in the
16 child's present custody: *Provided*, That where the alleged abusing
17 person, if known, is a member of a household, the court shall not
18 allow placement pursuant to this section of the child or children
19 in said home unless the alleged abusing person is or has been
20 precluded from visiting or residing in said home by judicial order.
21 In a case where there is more than one child in the home, or in the
22 temporary care, custody or control of the alleged offending parent,
23 the petition shall so state, and notwithstanding the fact that the
24 allegations of abuse or neglect may pertain to less than all of
25 such children, each child in the home for whom relief is sought
26 shall be made a party to the proceeding. Even though the acts of

1 abuse or neglect alleged in the petition were not directed against
2 a specific child who is named in the petition, the court shall
3 order the removal of such child, pending final disposition, if it
4 finds that there exists imminent danger to the physical well being
5 of the child and a lack of reasonable available alternatives to
6 removal. The initial order directing such custody shall contain an
7 order appointing counsel and scheduling the preliminary hearing,
8 and upon its service shall require the immediate transfer of
9 custody of such child or children to the department or a
10 responsible relative which may include any parent, guardian, or
11 other custodian. The court order shall state:

12 (A) That continuation in the home is contrary to the best
13 interests of the child and why; and

14 (B) Whether or not the department made reasonable efforts to
15 preserve the family and prevent the placement or that the emergency
16 situation made such efforts unreasonable or impossible. The order
17 may also direct any party or the department to initiate or become
18 involved in services to facilitate reunification of the family.

19 (b) Whether or not the court orders immediate transfer of
20 custody as provided in subsection (a) of this section, if the facts
21 alleged in the petition demonstrate to the court that there exists
22 imminent danger to the child, the court may schedule a preliminary
23 hearing giving the respondents at least five days' actual notice.
24 If the court finds at the preliminary hearing that there are no
25 alternatives less drastic than removal of the child and that a
26 hearing on the petition cannot be scheduled in the interim period,

1 the court may order that the child be delivered into the temporary
2 custody of the department or a responsible person or agency found
3 by the court to be a fit and proper person for the temporary care
4 of the child for a period not exceeding sixty days: *Provided*, That
5 the court order shall state:

6 (1) That continuation in the home is contrary to the best
7 interests of the child and set forth the reasons therefor;

8 (2) Whether or not the department made reasonable efforts to
9 preserve the family and to prevent the child's removal from his or
10 her home;

11 (3) Whether or not the department made reasonable efforts to
12 preserve the family and to prevent the placement or that the
13 emergency situation made such efforts unreasonable or impossible;
14 and

15 (4) What efforts should be made by the department, if any, to
16 facilitate the child's return home: *Provided, however*, That if the
17 court grants an improvement period as provided in section twelve of
18 this article, the sixty-day limit upon temporary custody is waived.

19 (c) If a child or children shall, in the presence of a child
20 protective service worker, be in an emergency situation which
21 constitutes an imminent danger to the physical well being of the
22 child or children, as that phrase is defined in section three,
23 article one of this chapter, and if such worker has probable cause
24 to believe that the child or children will suffer additional child
25 abuse or neglect or will be removed from the county before a
26 petition can be filed and temporary custody can be ordered, the

1 worker may, prior to the filing of a petition, take the child or
2 children into his or her custody without a court order: *Provided,*
3 That after taking custody of such child or children prior to the
4 filing of a petition, the worker shall forthwith appear before a
5 circuit judge or a juvenile referee of the county wherein custody
6 was taken, or if no such judge or referee be available, before a
7 circuit judge or a juvenile referee of an adjoining county, and
8 shall immediately apply for an order ratifying the emergency
9 custody of the child pending the filing of a petition. The circuit
10 court of every county in the state shall appoint at least one of
11 the magistrates of the county to act as a juvenile referee, who
12 shall serve at the will and pleasure of the appointing court, and
13 who shall perform the functions prescribed for such position by the
14 provisions of this subsection. The parents, guardians or
15 custodians of the child or children may be present at the time and
16 place of application for an order ratifying custody, and if at the
17 time the child or children are taken into custody by the worker,
18 the worker knows which judge or referee is to receive the
19 application, the worker shall so inform the parents, guardians or
20 custodians. The application for emergency custody may be on forms
21 prescribed by the Supreme Court of Appeals or prepared by the
22 prosecuting attorney or the applicant, and shall set forth facts
23 from which it may be determined that the probable cause described
24 above in this subsection exists. Upon such sworn testimony or
25 other evidence as the judge or referee deems sufficient, the judge
26 or referee may order the emergency taking by the worker to be

1 ratified. If appropriate under the circumstances, the order may
2 include authorization for an examination as provided for in
3 subsection (b), section four of this article. If a referee issues
4 such an order, the referee shall by telephonic communication have
5 such order orally confirmed by a circuit judge of the circuit or an
6 adjoining circuit who shall on the next judicial day enter an order
7 of confirmation. If the emergency taking is ratified by the judge
8 or referee, emergency custody of the child or children shall be
9 vested in the department until the expiration of the next two
10 judicial days, at which time any such child taken into emergency
11 custody shall be returned to the custody of his or her parent or
12 guardian or custodian unless a petition has been filed and custody
13 of the child has been transferred under the provisions of section
14 three of this article.

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

19 (1) The parent has subjected the child, another child of the
20 parent or any other child residing in the same household or under
21 the temporary or permanent custody of the parent to aggravated
22 circumstances which include, but are not limited to, abandonment,
23 torture, chronic abuse and sexual abuse;

24 (2) The parent has:

25 (A) Committed murder of the child's other parent, guardian or
26 custodian, another child of the parent or any other child residing

1 in the same household or under the temporary or permanent custody
2 of the parent;

3 (B) Committed voluntary manslaughter of the child's other
4 parent, guardian or custodian, another child of the parent or any
5 other child residing in the same household or under the temporary
6 or permanent custody of the parent;

7 (C) Attempted or conspired to commit such a murder or
8 voluntary manslaughter or been an accessory before or after the
9 fact to either such crime;

10 (D) Committed unlawful or malicious wounding that results in
11 serious bodily injury to the child, the child's other parent,
12 guardian or custodian, to another child of the parent or any other
13 child residing in the same household or under the temporary or
14 permanent custody of the parent;

15 (E) Committed sexual assault or sexual abuse of the child, the
16 child's other parent, guardian or custodian, another child of the
17 parent or any other child residing in the same household or under
18 the temporary or permanent custody of the parent; or

19 (F) Has been required by state or federal law to register with
20 a sex offender registry; or

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

23 **§49-6-5. Disposition of neglected or abused children.**

24 (a) Following a determination pursuant to section two of this
25 article wherein the court finds a child to be abused or neglected,
26 the department shall file with the court a copy of the child's case

1 plan, including the permanency plan for the child. The term case
2 plan means a written document that includes, where applicable, the
3 requirements of the family case plan as provided for in section
4 three, article six-d of this chapter and that also includes at
5 least the following: A description of the type of home or
6 institution in which the child is to be placed, including a
7 discussion of the appropriateness of the placement and how the
8 agency which is responsible for the child plans to assure that the
9 child receives proper care and that services are provided to the
10 parents, child and foster parents in order to improve the
11 conditions in the parent(s) home; facilitate return of the child to
12 his or her own home or the permanent placement of the child; and
13 address the needs of the child while in foster care, including a
14 discussion of the appropriateness of the services that have been
15 provided to the child. The term "permanency plan" refers to that
16 part of the case plan which is designed to achieve a permanent home
17 for the child in the least restrictive setting available. The plan
18 must document efforts to ensure that the child is returned home
19 within approximate time lines for reunification as set out in the
20 plan. Reasonable efforts to place a child for adoption or with a
21 legal guardian may be made at the same time reasonable efforts are
22 made to prevent removal or to make it possible for a child to
23 safely return home. If reunification is not the permanency plan
24 for the child, the plan must state why reunification is not
25 appropriate and detail the alternative placement for the child to
26 include approximate time lines for when such placement is expected

1 to become a permanent placement. This case plan shall serve as the
2 family case plan for parents of abused or neglected children.
3 Copies of the child's case plan shall be sent to the child's
4 attorney and parent, guardian or custodian or their counsel at
5 least five days prior to the dispositional hearing. The court
6 shall forthwith proceed to disposition giving both the petitioner
7 and respondents an opportunity to be heard. The court shall give
8 precedence to dispositions in the following sequence:

9 (1) Dismiss the petition;

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

13 (3) Return the child to his or her own home under supervision
14 of the department;

15 (4) Order terms of supervision calculated to assist the child
16 and any abusing parent or battered parent or parents or custodian
17 which prescribe the manner of supervision and care of the child and
18 which are within the ability of any parent or parents or custodian
19 to perform;

20 (5) Upon a finding that the abusing parent or battered parent
21 or parents are presently unwilling or unable to provide adequately
22 for the child's needs, commit the child temporarily to the custody
23 of the state department, a licensed private child welfare agency or
24 a suitable person who may be appointed guardian by the court. The
25 court order shall state:

1 (A) That continuation in the home is contrary to the best
2 interests of the child and why;

3 (B) Whether or not the department has made reasonable efforts,
4 with the child's health and safety being the paramount concern, to
5 preserve the family, or some portion thereof, and to prevent or
6 eliminate the need for removing the child from the child's home and
7 to make it possible for the child to safely return home;

8 (C) What efforts were made or that the emergency situation
9 made such efforts unreasonable or impossible; and

10 (D) The specific circumstances of the situation which made
11 such efforts unreasonable if services were not offered by the
12 department. The court order shall also determine under what
13 circumstances the child's commitment to the department shall
14 continue. Considerations pertinent to the determination include
15 whether the child should:

16 (i) Be continued in foster care for a specified period;

17 (ii) Be considered for adoption;

18 (iii) Be considered for legal guardianship;

19 (iv) Be considered for permanent placement with a fit and
20 willing relative; or

21 (v) Be placed in another planned permanent living arrangement,
22 but only in cases where the department has documented to the
23 circuit court a compelling reason for determining that it would not
24 be in the best interests of the child to follow one of the options
25 set forth in subparagraphs (i), (ii), (iii) or (iv) of this
26 paragraph. The court may order services to meet the special needs

1 of the child. Whenever the court transfers custody of a youth to
2 the department, an appropriate order of financial support by the
3 parents or guardians shall be entered in accordance with section
4 five, article seven of this chapter; or

5 (6) Upon a finding that there is no reasonable likelihood that
6 the conditions of neglect or abuse can be substantially corrected
7 in the near future and, when necessary for the welfare of the
8 child, terminate the parental, custodial and guardianship rights
9 and responsibilities of the abusing parent and commit the child to
10 the permanent sole custody of the nonabusing parent, if there be
11 one, or, if not, to either the permanent guardianship of the
12 department or a licensed child welfare agency. The court may award
13 sole custody of the child to a nonabusing battered parent. If the
14 court shall so find, then in fixing its dispositional order the
15 court shall consider the following factors:

16 (A) The child's need for continuity of care and caretakers;

17 (B) The amount of time required for the child to be integrated
18 into a stable and permanent home environment; and

19 (C) Other factors as the court considers necessary and proper.

20 Notwithstanding any other provision of this article, the court
21 shall give consideration to the wishes of a child fourteen years of
22 age or older or otherwise of an age of discretion as determined by
23 the court regarding the permanent termination of parental rights.
24 No adoption of a child shall take place until all proceedings for
25 termination of parental rights under this article and appeals
26 thereof are final. In determining whether or not parental rights

1 should be terminated, the court shall consider the efforts made by
2 the department to provide remedial and reunification services to
3 the parent. The court order shall state:

4 (i) That continuation in the home is not in the best interest
5 of the child and why;

6 (ii) Why reunification is not in the best interests of the
7 child;

8 (iii) Whether or not the department made reasonable efforts,
9 with the child's health and safety being the paramount concern, to
10 preserve the family, or some portion thereof, and to prevent the
11 placement or to eliminate the need for removing the child from the
12 child's home and to make it possible for the child to safely return
13 home, or that the emergency situation made such efforts
14 unreasonable or impossible; and

15 (iv) Whether or not the department made reasonable efforts to
16 preserve and reunify the family, or some portion thereof, including
17 a description of what efforts were made or that such efforts were
18 unreasonable due to specific circumstances.

19 (7) For purposes of the court's consideration of the
20 disposition custody of a child pursuant to the provisions of this
21 subsection, the department is not required to make reasonable
22 efforts to preserve the family if the court determines:

23 (A) The parent has subjected the child, another child of the
24 parent or any other child residing in the same household or under
25 the temporary or permanent custody of the parent to aggravated

1 circumstances which include, but are not limited to, abandonment,
2 torture, chronic abuse and sexual abuse;

3 (B) The parent has:

4 (i) Committed murder of the child's other parent, guardian or
5 custodian, another child of the parent or any other child residing
6 in the same household or under the temporary or permanent custody
7 of the parent;

8 (ii) Committed voluntary manslaughter of the child's other
9 parent, guardian or custodian, another child of the parent or any
10 other child residing in the same household or under the temporary
11 or permanent custody of the parent;

12 (iii) Attempted or conspired to commit such a murder or
13 voluntary manslaughter or been an accessory before or after the
14 fact to either such crime;

15 (iv) Committed a felonious assault that results in serious
16 bodily injury to the child, the child's other parent, guardian or
17 custodian, to another child of the parent or any other child
18 residing in the same household or under the temporary or permanent
19 custody of the parent; or

20 (v) Committed sexual assault or sexual abuse of the child, the
21 child's other parent, guardian or custodian, another child of the
22 parent or any other child residing in the same household or under
23 the temporary or permanent custody of the parent; or

24 (vi) Has been required by state or federal law to register
25 with a sex offender registry; or

1 (C) The parental rights of the parent to another child have
2 been terminated involuntarily; or

3 (D) A parent has been required by state or federal law to
4 register with a sex offender registry, and the court has determined
5 in consideration of the nature and circumstances surrounding the
6 prior charges against that parent, that the child's interests would
7 not be promoted by a preservation of the family.

8 (b) As used in this section, "no reasonable likelihood that
9 conditions of neglect or abuse can be substantially corrected"
10 shall mean that, based upon the evidence before the court, the
11 abusing adult or adults have demonstrated an inadequate capacity to
12 solve the problems of abuse or neglect on their own or with help.
13 Such conditions shall be considered to exist in the following
14 circumstances, which shall not be exclusive:

15 (1) The abusing parent or parents have habitually abused or
16 are addicted to alcohol, controlled substances or drugs, to the
17 extent that proper parenting skills have been seriously impaired
18 and such person or persons have not responded to or followed
19 through the recommended and appropriate treatment which could have
20 improved the capacity for adequate parental functioning;

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

25 (3) The abusing parent or parents have not responded to or
26 followed through with a reasonable family case plan or other

1 rehabilitative efforts of social, medical, mental health or other
2 rehabilitative agencies designed to reduce or prevent the abuse or
3 neglect of the child, as evidenced by the continuation or
4 insubstantial diminution of conditions which threatened the health,
5 welfare or life of the child;

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

7 (5) The abusing parent or parents have repeatedly or seriously
8 injured the child physically or emotionally, or have sexually
9 abused or sexually exploited the child, and the degree of family
10 stress and the potential for further abuse and neglect are so great
11 as to preclude the use of resources to mitigate or resolve family
12 problems or assist the abusing parent or parents in fulfilling
13 their responsibilities to the child;

14 (6) The abusing parent or parents have incurred emotional
15 illness, mental illness or mental deficiency of such duration or
16 nature as to render such parent or parents incapable of exercising
17 proper parenting skills or sufficiently improving the adequacy of
18 such skills; or

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

24 (c) The court may, as an alternative disposition, allow the
25 parents or custodians an improvement period not to exceed six
26 months. During this period the court shall require the parent to

1 rectify the conditions upon which the determination was based. The
2 court may order the child to be placed with the parents, or any
3 person found to be a fit and proper person, for the temporary care
4 of the child during the period. At the end of the period, the
5 court shall hold a hearing to determine whether the conditions have
6 been adequately improved and at the conclusion of the hearing shall
7 make a further dispositional order in accordance with this section.

8 **§49-6-6. Modification of dispositional orders.**

9 (a) Upon motion of a child, a child's parent or custodian or
10 the department alleging a change of circumstances requiring a
11 different disposition, the court shall conduct a hearing pursuant
12 to section two of this article and may modify a dispositional order
13 if the court finds by clear and convincing evidence a material
14 change of circumstances and that such modification is in the
15 child's best interests: *Provided*, That a dispositional order
16 pursuant to subdivision (6), subsection (a) of section five shall
17 not be modified after the child has been adopted, except as
18 provided in subsections (b) and (c) of this section. Adequate and
19 timely notice of any motion for modification shall be given to the
20 child's counsel, counsel for the child's parent or custodian, the
21 department and any person entitled to notice and the right to be
22 heard. The circuit court of origin has exclusive jurisdiction over
23 placement of the child, and such placement shall not be disrupted
24 or delayed by any administrative process of the department.

25 (b) If the child is removed or relinquished from an adoptive
26 home or other permanent placement after the case has been

1 dismissed, any party with notice thereof and the receiving agency
2 shall promptly report the matter to the circuit court of origin,
3 the department and the child's counsel, and the court shall
4 schedule a permanency hearing within sixty days of the report to
5 the circuit court, with notice given to any appropriate parties and
6 persons entitled to notice and the right to be heard. The
7 department shall convene a multidisciplinary treatment team meeting
8 within thirty days of the receipt of notice of permanent placement
9 disruption.

10 (c) If a child has not been adopted, the child or department
11 may move the court to place the child with a parent or custodian
12 whose rights have been terminated and/or restore such parent's or
13 guardian's rights. Under these circumstances, the court may order
14 such placement and/or restoration of a parent's or guardian's
15 rights if it finds by clear and convincing evidence a material
16 change of circumstances and that such placement and/or restoration
17 is in the child's best interests.

18 **§49-6-8. Permanency hearing and permanent placement review.**

19 (a) If the court finds, pursuant to any provision of this
20 article, that the department is not required to make reasonable
21 efforts to preserve the family, then, notwithstanding any other
22 provision, a permanency hearing must be held within thirty days
23 following the entry of the court order so finding, and a permanent
24 placement review hearing must be conducted at least once every
25 three calendar months thereafter until a permanent placement is
26 achieved.

1 (b) If, twelve months after receipt by the department or its
2 authorized agent of physical custody of a child either by a court
3 ordered placement or by a voluntary agreement, the department has
4 not placed a child in an adoptive home or placed the child with a
5 natural parent or placed the child in legal guardianship or
6 permanently placed the child with a fit and willing relative, the
7 court shall hold a permanency hearing. The department shall file
8 a report with the court detailing the efforts that have been made
9 to place the child in a permanent home and copies of the child's
10 case plan, including the permanency plan as defined in section five,
11 article six of this chapter. Copies of the report shall be sent to
12 the parties and all persons entitled to notice and the right to be
13 heard. The court shall schedule a hearing, giving notice and the
14 right to be present to: The child's attorney; the child, if twelve
15 years of age or older; the child's parents; the child's guardians;
16 the child's foster parents; any preadoptive parent or any relative
17 providing care for the child; any person entitled to notice and the
18 right to be heard; and such other persons as the court may, in its
19 discretion, direct. The child's presence may be waived by the
20 child's attorney at the request of the child or if the child would
21 suffer emotional harm. The purpose of the hearing is to review the
22 child's case, to determine whether and under what conditions the
23 child's commitment to the department shall continue and to determine
24 what efforts are necessary to provide the child with a permanent
25 home. In the case of a child who will not be returned to his or her
26 parent, the court shall consider in-state and out-of-state placement

1 options, and, if the court considers an out-of-state placement, the
2 court shall determine whether such placement is in the best
3 interests of the child; in the case of a child who has attained
4 sixteen years of age, the court shall determine the services needed
5 to assist the child to make the transition from foster care to
6 independent living. In any case in which the court decides to order
7 the child placed in an out-of-state facility or program it shall set
8 forth in the order directing the placement the reasons why the child
9 was not placed in an in-state facility or program. At the
10 conclusion of the hearing the court shall, in accordance with the
11 best interests of the child, enter an order containing all such
12 appropriate findings. The court order shall state: (1) Whether or
13 not the department made reasonable efforts to preserve the family
14 and to prevent out-of-home placement or that the specific situation
15 made such effort unreasonable; (2) whether or not the department
16 made reasonable efforts to finalize the permanency plan for the
17 child; and (3) identify services required to meet the child's needs.

18 (c) The court shall conduct another permanency hearing within
19 twelve months thereafter for each child who remains in the physical
20 or legal custody of the department until the child is placed in an
21 adoptive home or returned to his or her parents or placed in legal
22 guardianship or permanently placed with a fit and willing relative.

23 (d) The state department shall annually report to the court the
24 current status of the placements of children in permanent care and
25 custody of the state department who have not been adopted.

1 (e) The state department shall file a report with the court in
2 any case where any child in the temporary or permanent custody of
3 the state receives more than three placements in one year no later
4 than thirty days after the third placement. This report shall be
5 provided to all parties and persons entitled to notice and the right
6 to be heard. Upon motion by any party, the court shall review these
7 placements and determine what efforts are necessary to provide the
8 child with a permanent home: *Provided*, That no report shall be
9 provided to any parent or parent's attorney whose parental rights
10 have been terminated pursuant to this article.

11 (f) The state department shall notify, in writing, the court,
12 the child, if over the age of twelve, the child's attorney, the
13 parents and the parents' attorney forty-eight hours prior to the
14 move if this is a planned move, or within forty-eight hours of the
15 next business day after the move if this is an emergency move,
16 except where such notification would endanger the child or the
17 foster family. This notice shall not be required in any case where
18 the child is in imminent danger in the child's current placement.
19 The location of the child need not be disclosed, but the purpose of
20 the move should be. This requirement is not waived by placement of
21 the child in a home or other residence maintained by a private
22 provider. No notice shall be provided pursuant to this provision
23 to any parent or parent's attorney whose parental rights have been
24 terminated pursuant to this article.

25 (g) Nothing in this article precludes any party from
26 petitioning the court for review of the child's case at any time.

1 The court shall grant such petition upon a showing that there is a
2 change in circumstance or needs of the child that warrants court
3 review.

4 (h) Any foster parent, preadoptive parent or relative providing
5 care for the child shall be given notice of and the right to be
6 heard at the permanency hearing provided in this section.

7 **§49-6-12. Improvement period in cases of child neglect or abuse.**

8 (a) A court may grant a respondent an improvement period of a
9 period not to exceed three months prior to making a finding that a
10 child is abused or neglected pursuant to section two of this article
11 only when:

12 (1) The respondent files a written motion requesting the
13 improvement period;

14 (2) The respondent demonstrates, by clear and convincing
15 evidence, that the respondent is likely to fully participate in the
16 improvement period and the court further makes a finding, on the
17 record, of the terms of the improvement period;

18 (3) In the order granting the improvement period, the court (A)
19 orders that a hearing be held to review the matter within sixty days
20 of the granting of the improvement period; or (B) orders that a
21 hearing be held to review the matter within ninety days of the
22 granting of the improvement period and that the department submit
23 a report as to the respondents progress in the improvement period
24 within sixty days of the order granting the improvement period; and

25 (4) The order granting the improvement period requires the
26 department to prepare and submit to the court an individualized

1 family case plan in accordance with the provisions of section three,
2 article six-d of this chapter;

3 (b) After finding that a child is an abused or neglected child
4 pursuant to section two of this article, a court may grant a
5 respondent an improvement period of a period not to exceed six
6 months when:

7 (1) The respondent files a written motion requesting the
8 improvement period;

9 (2) The respondent demonstrates, by clear and convincing
10 evidence, that the respondent is likely to fully participate in the
11 improvement period and the court further makes a finding, on the
12 record, of the terms of the improvement period;

13 (3) In the order granting the improvement period, the court (A)
14 orders that a hearing be held to review the matter within sixty days
15 of the granting of the improvement period; or (B) orders that a
16 hearing be held to review the matter within ninety days of the
17 granting of the improvement period and that the department submit
18 a report as to the respondent's progress in the improvement period
19 within sixty days of the order granting the improvement period;

20 (4) Since the initiation of the proceeding, the respondent has
21 not previously been granted any improvement period or the respondent
22 demonstrates that since the initial improvement period, the
23 respondent has experienced a substantial change in circumstances.
24 Further, the respondent shall demonstrate that due to that change
25 in circumstances the respondent is likely to fully participate in
26 a further improvement period; and

1 (5) The order granting the improvement period requires the
2 department to prepare and submit to the court an individualized
3 family case plan in accordance with the provisions of section three,
4 article six-d of this chapter.

5 (c) The court may grant an improvement period not to exceed six
6 months as a disposition pursuant to section five of this article
7 when:

8 (1) The respondent moves in writing for the improvement period;

9 (2) The respondent demonstrates, by clear and convincing
10 evidence, that the respondent is likely to fully participate in the
11 improvement period and the court further makes a finding, on the
12 record, of the terms of the improvement period;

13 (3) In the order granting the improvement period, the court:

14 (A) Orders that a hearing be held to review the matter within
15 sixty days of the granting of the improvement period; or

16 (B) Orders that a hearing be held to review the matter within
17 ninety days of the granting of the improvement period and that the
18 department submit a report as to the respondent's progress in the
19 improvement period within sixty days of the order granting the
20 improvement period;

21 (4) Since the initiation of the proceeding, the respondent has
22 not previously been granted any improvement period or the respondent
23 demonstrates that since the initial improvement period, the
24 respondent has experienced a substantial change in circumstances.
25 Further, the respondent shall demonstrate that due to that change in

1 circumstances, the respondent is likely to fully participate in the
2 improvement period; and

3 (5) The order granting the improvement period shall require the
4 department to prepare and submit to the court an individualized
5 family case plan in accordance with the provisions of section three,
6 article six-d of this chapter.

7 (d) When any improvement period is granted to a respondent
8 pursuant to the provisions of this section, the respondent shall be
9 responsible for the initiation and completion of all terms of the
10 improvement period. The court may order the state department to pay
11 expenses associated with the services provided during the
12 improvement period when the respondent has demonstrated that he or
13 she is unable to bear such expenses.

14 (e) When any improvement period is granted to a respondent
15 pursuant to the provisions of this section, the respondent shall
16 execute a release of all medical information regarding that
17 respondent, including, but not limited to, information provided by
18 mental health and substance abuse professionals and facilities.
19 Such release shall be accepted by any such professional or facility
20 regardless of whether the release conforms to any standard required
21 by that facility.

22 (f) When any respondent is granted an improvement period
23 pursuant to the provisions of this article, the department shall
24 monitor the progress of such person in the improvement period. When
25 the respondent fails to participate in any service mandated by the
26 improvement period, the state department shall initiate action to

1 inform the court of that failure. When the department demonstrates
2 that the respondent has failed to participate in any provision of
3 the improvement period, the court shall forthwith terminate the
4 improvement period.

5 (g) A court may extend any improvement period granted pursuant
6 to subsections (b) or (c) of this section for a period not to exceed
7 three months when the court finds that the respondent has
8 substantially complied with the terms of the improvement period;
9 that the continuation of the improvement period will not
10 substantially impair the ability of the department to permanently
11 place the child; and that such extension is otherwise consistent
12 with the best interest of the child.

13 (h) Upon the motion by any party, the court shall terminate any
14 improvement period granted pursuant to this section when the court
15 finds that respondent has failed to fully participate in the terms
16 of the improvement period.

17 (i) This section may not be construed to prohibit a court from
18 ordering a respondent to participate in services designed to reunify
19 a family or to relieve the department of any duty to make reasonable
20 efforts to reunify a family required by state or federal law.

21 (j) Any hearing scheduled pursuant to the provisions of this
22 section may be continued only for good cause upon a written motion
23 properly served on all parties. When a court grants such
24 continuance, the court shall enter an order granting the continuance
25 which shall specify a future date when the hearing will be held.

1 (k) Any hearing to be held at the end of an improvement period
2 shall be held as nearly as practicable on successive days and shall
3 be held as close in time as possible after the end of said
4 improvement period and shall be held no later than sixty days of the
5 termination of such improvement period.

6 (l) Notwithstanding any other provision of this section, no
7 combination of any improvement periods or extensions thereto may
8 cause a child to be in foster care more than fifteen months of the
9 most recent twenty-two months, unless the court finds compelling
10 circumstances by clear and convincing evidence that it is in the
11 child's best interests to extend the time limits contained in this
12 paragraph.

13 **ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED OF BEING ABUSED OR**
14 **NEGLECTED.**

15 **§49-6A-5. Reporting procedures.**

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

23 (b) A copy of any report of serious physical abuse, sexual
24 abuse or assault shall be forwarded by the department to the
25 appropriate law-enforcement agency, the prosecuting attorney or the
26 coroner or medical examiner's office. All reports under this

1 article shall be confidential. Reports of known or suspected
2 institutional child abuse or neglect shall be made and received as
3 all other reports made pursuant to this article.

4 **ARTICLE 6D. WEST VIRGINIA CHILD PROTECTIVE SERVICES ACT.**

5 **§49-6D-3. Unified child and family case plans.**

6 (a) The Department of Health and Human Resources shall develop
7 a unified child and family case plan for every family wherein a
8 person has been referred to the department after being allowed an
9 improvement period or where the child is placed in foster care. The
10 case plan must be filed within sixty days of the child coming into
11 foster care or within thirty days of the inception of the
12 improvement period, whichever occurs first. The department may also
13 prepare a case plan for any person who voluntarily seeks child abuse
14 and neglect services from the department, or who is referred to the
15 department by another public agency or private organization. The
16 case plan provisions shall comply with federal law and the rules of
17 procedure for child abuse and neglect proceedings.

18 (b) The department shall convene a multidisciplinary treatment
19 team, which shall develop the case plan. Parents, guardians or
20 custodians shall participate fully in the development of the case
21 plan, and the child shall also fully participate if sufficiently
22 mature and the child's participation is otherwise appropriate. The
23 case plan may be modified from time to time to allow for flexibility
24 in goal development, and in each such case the modifications shall
25 be submitted to the court in writing. Reasonable efforts to place
26 a child for adoption or with a legal guardian may be made at the

1 same time as reasonable efforts are being made to prevent removal or
2 to make it possible for a child to return safely home. The court
3 shall examine the proposed case plan or any modification thereof,
4 and upon a finding by the court that the plan or modified plan can
5 be easily communicated, explained and discussed so as to make the
6 participants accountable and able to understand the reasons for any
7 success or failure under the plan, the court shall inform the
8 participants of the probable action of the court if goals are met or
9 not met.

10 (c) In furtherance of the provisions of this article, the
11 department shall, within the limits of available funds, establish
12 programs and services for the following purposes:

13 (1) For the development and establishment of training programs
14 for professional and paraprofessional personnel in the fields of
15 medicine, law, education, social work and other relevant fields who
16 are engaged in, or intend to work in, the field of the prevention,
17 identification and treatment of child abuse and neglect; and
18 training programs for children, and for persons responsible for the
19 welfare of children, in methods of protecting children from child
20 abuse and neglect;

21 (2) For the establishment and maintenance of centers, serving
22 defined geographic areas, staffed by multidisciplinary teams and
23 community teams of personnel trained in the prevention,
24 identification and treatment of child abuse and neglect cases, to
25 provide a broad range of services related to child abuse and
26 neglect, including direct support as well as providing advice and

1 consultation to individuals, agencies and organizations which
2 request such services;

3 (3) For furnishing services of multidisciplinary teams and
4 community teams, trained in the prevention, identification and
5 treatment of child abuse and neglect cases, on a consulting basis to
6 small communities where such services are not available;

7 (4) For other innovative programs and projects that show
8 promise of successfully identifying, preventing or remedying the
9 causes of child abuse and neglect, including, but not limited to,
10 programs and services designed to improve and maintain parenting
11 skills, programs and projects for parent self help, and for
12 prevention and treatment of drug-related child abuse and neglect;
13 and

14 (5) Assisting public agencies or nonprofit private
15 organizations or combinations thereof in making applications for
16 grants from, or in entering into contracts with, the Secretary of
17 the federal Department of Health and Human Services for
18 demonstration programs and projects designed to identify, prevent
19 and treat child abuse and neglect.

20 (d) Agencies, organizations and programs funded to carry out
21 the purposes of this section shall be structured so as to comply
22 with any applicable federal law, any regulation of the federal
23 Department of Health and Human Services or the secretary thereof,
24 and any final comprehensive plan of the federal advisory board on
25 child abuse and neglect. In funding organizations, the department

1 shall, to the extent feasible, ensure that parental organizations
2 combating child abuse and neglect receive preferential treatment.

3 **ARTICLE 7. GENERAL PROVISIONS.**

4 **§49-7-1. Confidentiality of records.**

5 (a) Except as otherwise provided in this chapter or by order of
6 the court, all records and information concerning a child or
7 juvenile which are maintained by the Division of Juvenile Services,
8 the Department of Health and Human Resources, a child agency or
9 facility, court or law-enforcement agency shall be kept confidential
10 and shall not be released or disclosed to anyone, including any
11 federal or state agency.

12 (b) Notwithstanding the provisions of subsection (a) of this
13 section or any other provision of this code to the contrary, records
14 concerning a child or juvenile, except adoption records and records
15 disclosing the identity of a person making a complaint of child
16 abuse or neglect shall be made available:

17 (1) Where otherwise authorized by this chapter;

18 (2) To:

19 (A) The child;

20 (B) A parent whose parental rights have not been terminated; or

21 (C) The attorney of the child or parent;

22 (3) With the written consent of the child or of someone
23 authorized to act on the child's behalf; or

24 (4) Pursuant to an order of a court of record: *Provided*, That
25 the court shall review such record or records for relevancy and
26 materiality to the issues in the proceeding and safety, and may

1 issue an order to limit the examination and use of the records or
2 any part thereof.

3 (c) In addition to those persons or entities to whom
4 information may be disclosed under subsection (b) of this section,
5 information related to child abuse or neglect proceedings, except
6 information relating to the identity of the person reporting or
7 making a complaint of child abuse or neglect, shall be made
8 available, upon request, to:

9 (1) Federal, state or local government entities, or any agent
10 of such entities, including law-enforcement agencies and prosecuting
11 attorneys, having a need for such information in order to carry out
12 its responsibilities under law to protect children from abuse and
13 neglect;

14 (2) The child fatality review team;

15 (3) Child abuse citizen review panels;

16 (4) Multidisciplinary investigative and treatment teams; or

17 (5) A grand jury, circuit court or family court, upon a finding
18 that information in the records is necessary for the determination
19 of an issue before the grand jury, circuit court or family court.

20 (d) In the event of a child fatality or near fatality due to
21 child abuse and neglect, information relating to such fatality or
22 near fatality shall be made public by the Department of Health and
23 Human Resources and to the entities described in subsection (c) of
24 this section, all under the circumstances described in that
25 subsection: *Provided*, That information released by the Department of
26 Health and Human Resources pursuant to this subsection shall not

1 include the identity of a person reporting or making a complaint of
2 child abuse or neglect. For purposes of this subsection, "near
3 fatality" means any medical condition of the child which is
4 certified by the attending physician to be life threatening.

5 (e) Except in juvenile proceedings which are transferred to
6 criminal proceedings, law-enforcement records and files concerning
7 a child or juvenile shall be kept separate from the records and
8 files of adults and not included within the court files. Law-
9 enforcement records and files concerning a child or juvenile shall
10 only be open to inspection pursuant to the provisions of sections
11 seventeen and eighteen, article five of this chapter.

12 (f) Any person who willfully violates the provisions of this
13 section is guilty of a misdemeanor and, upon conviction thereof,
14 shall be fined not more than \$1,000, or confined in the county or
15 regional jail for not more than six months, or be both fined and
16 confined. A person convicted of violating the provisions of this
17 section shall also be liable for damages in the amount of \$300 or
18 actual damages, whichever is greater.

19 (g) Notwithstanding the provisions of this section, or any
20 other provision of this code to the contrary, the name and identity
21 of any juvenile adjudicated or convicted of a violent or felonious
22 crime shall be made available to the public.

23 **§49-7-36. Quarterly status review and yearly permanency hearings.**

24 (a) For each child who remains in foster care as a result of a
25 juvenile proceeding or as a result of a child abuse and neglect
26 proceeding, the circuit court with the assistance of the

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

12 (b) For each transitioning adult as that term is defined in
13 §49-2B-2(x) who remains in foster care, the circuit court shall
14 conduct status review hearings as described in subsection (a) of
15 this section once every three months until permanency is achieved.

16 (c) For each child or transitioning adult who continues to
17 remain in foster care, the circuit court shall conduct a permanency
18 hearing no later than twelve months after the date the child or
19 transitioning adult is considered to have entered foster care, and
20 at least once every twelve months thereafter until permanency is
21 achieved. For purposes of permanency planning for transitioning
22 adults, the circuit court shall make factual findings and
23 conclusions of law as to whether the department made reasonable
24 efforts to finalize a permanency plan to prepare a transitioning
25 adult for emancipation or independence or another approved
26 permanency option such as, but not limited to, adoption or legal

1 guardianship pursuant to the West Virginia Guardianship and
2 Conservatorship Act.

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