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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1994



# ENROLLED

SENATE BILL NO. 1007

(By Senator Jones, et al,)



PASSED March 18, 1994

In Effect 90 days from Passage

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

**Senate Bill No. 1007**

(BY SENATORS JONES, PLYMALE, BURDETTE,  
MR. PRESIDENT, CHERNENKO, ANDERSON,  
BAILEY, HUMPHREYS, DITTMAR, BLATNIK,  
WALKER, TOMBLIN, WEHRLE, MILLER, MINARD,  
DALTON, WAGNER, WHITLOW, WOOTON, MANCHIN,  
GRUBB, HOLLIDAY, YODER, CRAIGO, BOLEY,  
LUCHT, SCHOONOVER, ROSS, WITHERS,  
HELMICK AND SHARPE)

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[Passed March 18, 1994; in effect ninety days from passage.]

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AN ACT to amend article six, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a; to amend and reenact section nine, article six-a of said chapter; to amend and reenact section twenty-four, article seven of said chapter; to amend and reenact section three, article eleven-a, chapter sixty-one of said code; and to amend and reenact sections seven and seven-a, article twelve, chapter sixty-two of said code, all relating to establishing a plan for achieving national caseload standards for child protective service workers by the year one thousand nine hundred ninety-five; prohibiting restrictions on investigations and available services;

required face-to-face interviews of certain abused minors; referrals from circuit courts and family law masters; promulgation of rules and protocol for law enforcement in child abuse cases; promulgation of legislative rules; allowing statement of certain therapists in presentence reports; and providing for presentence diagnosis and treatment of certain offenders.

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

That article six, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one-a; that section nine, article six-a of said chapter be amended and reenacted; that section twenty-four, article seven of said chapter be amended and reenacted; that section three, article eleven-a, chapter sixty-one of said code be amended and reenacted; and that sections seven and seven-a, article twelve, chapter sixty-two of said code be amended and reenacted, all to read as follows:

#### **CHAPTER 49. CHILD WELFARE.**

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

##### **§49-6-1a. Minimum staffing complement for child protective services.**

1 For the sole purpose of increasing the number of full  
2 time front line child protective service case workers and  
3 investigators, the secretary of the department of health  
4 and human resources shall have the authority to transfer  
5 funds between all general revenue accounts under the  
6 secretary's authority and/or between personnel and  
7 nonpersonnel lines within each account under the  
8 secretary's authority: *Provided*, That nothing in this  
9 section shall be construed to require the department to  
10 hire additional child protective service workers at any  
11 time if the department determines that funds are not  
12 available for such workers. Additionally, the secretary  
13 shall prepare a plan to allow the department to  
14 progressively reduce caseload standards in West Virginia  
15 for child protective services workers, which if adopted

16 by the Legislature during the regular session of the year  
17 one thousand nine hundred ninety-five, shall require  
18 implementation no later than the first day of July, one  
19 thousand nine hundred ninety-six, with said plan to be  
20 submitted to the joint committee on government and  
21 finance by the thirtieth day of September, one thousand  
22 nine hundred ninety-four, and a final report to be  
23 submitted to the Legislature by the first day of January,  
24 one thousand nine hundred ninety-five.

**ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR  
NEGLECTED.**

**§49-6A-9. Establishment of child protective services; general  
duties and powers; cooperation of other state  
agencies.**

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

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

22 Each local child protective service office shall:

23 (1) Receive or arrange for the receipt of all reports of

24 children known or suspected to be abused or neglected  
25 on a twenty-four hour, seven-day-a-week basis and  
26 cross-file all such reports under the names of the  
27 children, the family, any person substantiated as being  
28 an abuser or neglecter by investigation of the depart-  
29 ment of human services, with use of such cross-filing of  
30 such person's name limited to the internal use of the  
31 department;

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

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

42 (4) Respond immediately to all allegations of imminent  
43 danger to the physical well-being of the child or of  
44 serious physical abuse. As a part of this response, within  
45 seventy-two hours, there shall be: A face-to-face  
46 interview with the child or children; and the develop-  
47 ment of a protection plan which may involve law-  
48 enforcement officers or the court; and

49 (5) In addition to any other requirements imposed by  
50 this section, when any matter regarding child custody is  
51 pending, the circuit court or family law master may refer  
52 allegations of child abuse and neglect to the local child  
53 protective service for investigation of the allegations as  
54 defined by this chapter and require the local child  
55 protective service to submit a written report of the  
56 investigation to the referring circuit court or family law  
57 master within the time frames set forth by the circuit  
58 court or family law master.

59 (c) In those cases in which the local child protective  
60 service determines that the best interests of the child

61 require court action, the local child protective service  
62 shall initiate the appropriate legal proceeding.

63 (d) The local child protective service shall be responsi-  
64 ble for providing, directing or coordinating the appropri-  
65 ate and timely delivery of services to any child suspected  
66 or known to be abused or neglected, including services to  
67 the child's family and those responsible for the child's  
68 care.

69 (e) To carry out the purposes of this article, all  
70 departments, boards, bureaus and other agencies of the  
71 state or any of its political subdivisions and all agencies  
72 providing services under the local child protective  
73 service plan shall, upon request, provide to the local  
74 child protective service such assistance and information  
75 as will enable it to fulfill its responsibilities.

**ARTICLE 7. GENERAL PROVISIONS.**

**§49-7-24. Rules and regulations under chapter.**

1 The secretary of the department of health and human  
2 resources shall propose for promulgation legislative rules  
3 in accordance with the provisions of chapter twenty-  
4 nine-a of this code to implement the provisions of this  
5 chapter.

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

**ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.**

**§61-11A-3. Victim impact statement; when required; contents;  
use; right of defendant to review and present  
evidence.**

1 (a) In every case in which a presentence report is  
2 ordered by the court, such presentence report shall  
3 contain a victim impact statement unless the court  
4 orders otherwise, if the defendant, in committing a  
5 felony or misdemeanor, caused physical, psychological or  
6 economic injury or death of the victim.

7 (b) The victim impact statement shall be prepared by  
8 the probation officer and shall include the identity of the

9 victim, an itemization of any economic loss suffered by  
10 the victim as a result of the offense, a description of the  
11 nature and extent of any physical or psychological injury  
12 suffered by the victim as a result of the offense, the  
13 details of any change in the victim's personal welfare,  
14 lifestyle or family relationships as a result of the offense,  
15 whether there has been any request for psychological or  
16 medical services initiated by the victim or the victim's  
17 family as a result of the offense and such other informa-  
18 tion related to the impact of the offense upon the victim  
19 as may be required by the court.

20 (c) If the court does not order a presentence investiga-  
21 tion and report, the prosecuting attorney may request  
22 that the probation officer prepare a victim impact  
23 statement. The victim impact statement shall be  
24 considered by the court as a factor in determining the  
25 appropriate sentence. Additionally, the statement may  
26 be utilized for the determination of claims by victims of  
27 crimes pursuant to the provisions of article two-a,  
28 chapter fourteen of this code.

29 (d) In cases that involve child victims of offenses  
30 defined in section twelve, article eight of this chapter or  
31 article eight-b or eight-d of this chapter, any victim  
32 impact statement in a presentence report may include a  
33 statement from a therapist, psychologist or physician  
34 who is providing treatment to the child as to the  
35 recommendations regarding the effect that possible  
36 disposition may have on the child.

37 (e) A victim impact statement prepared in accordance  
38 with the provisions of this section, other than for claims  
39 by victims of crimes pursuant to the provisions of article  
40 two-a, chapter fourteen of this code, shall be made  
41 available to the defendant, and his counsel if he is so  
42 represented, at least ten days prior to the date set for  
43 pronouncement of his sentence. The court shall, upon  
44 motion by or on behalf of the defendant, grant the  
45 defendant a hearing, whereby he may introduce  
46 testimony or other information related to any alleged

47 factual inaccuracies in the statement.

## **CHAPTER 62. CRIMINAL PROCEDURE.**

### **ARTICLE 12. PROBATION AND PAROLE.**

#### **§62-12-7. Preliminary investigation; report on prospective probationers.**

1 When directed by the court, the probation officer shall  
2 make a careful investigation of, and a written report  
3 with recommendations concerning, any prospective  
4 probationer. Insofar as practicable this report shall  
5 include information concerning the offender's court and  
6 criminal record, occupation, family background,  
7 education, habits and associations, mental and physical  
8 condition, the names, relationship, ages and condition of  
9 those dependent upon him for support and such other  
10 facts as may aid the court in determining the propriety  
11 and conditions of his release on probation. No person  
12 convicted of a felony or of any offense described in  
13 article eight-b or eight-d, chapter sixty-one of this code  
14 against a minor child may be released on probation until  
15 this report shall have been presented to and considered  
16 by the court. The court may in its discretion request such  
17 a report concerning any person convicted of a misde-  
18 meanor. The presentence report of any person convicted  
19 of an offense, described in said articles or section twelve,  
20 article eight of said chapter, may include a statement  
21 from a therapist, psychologist or physician who is  
22 providing treatment to the child. A copy of all reports  
23 shall be filed with the board of probation and parole.

#### **§62-12-7a. Presentence diagnosis and classification; power of court; custody of convicted person; provision for presentence reports; penalty for escape.**

1 Notwithstanding any other provision of law, when any  
2 person has been found guilty of, or pleads guilty to, a  
3 felony, or any offense described in article eight-d or  
4 eight-b, chapter sixty-one of this code, against a minor  
5 child, the court may, prior to pronouncing of sentence,  
6 direct that the person be delivered into the custody of



7 the commissioner of corrections, for the purpose of  
8 diagnosis and classification for a period not to exceed  
9 sixty days: *Provided*, That the court shall require that a  
10 presentence report be completed by the probation officer  
11 assigned to that person and be made available to the  
12 commissioner of corrections prior to delivery of the  
13 person to a statutorily approved diagnosis and classifica-  
14 tion unit of the division of corrections. While at the  
15 diagnosis and classification unit the person shall  
16 undergo examination, diagnosis and classification and  
17 shall then be remanded and delivered to the custody of  
18 the sheriff of the county wherein he or she was found  
19 guilty or entered such plea. Within ten days following  
20 the termination of the examination, diagnosis and  
21 classification, the commissioner of corrections shall  
22 make or cause to be made a report to the court wherein  
23 the person was found guilty, or entered a plea of guilty,  
24 containing the results, findings, conclusions and  
25 recommendations of the commissioner with respect to  
26 such person.

27 Whenever a person is remanded into the custody of the  
28 commissioner of corrections pursuant to this section, the  
29 person shall be given credit on any sentence subse-  
30 quently imposed by the court equal to the time spent in  
31 such custody.

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

*[Handwritten signature]*  
.....  
Chairman Senate Committee

*[Handwritten signature]*  
.....  
Ernest C. Moore  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Handwritten signature]*  
.....  
Clerk of the Senate

*[Handwritten signature]*  
.....  
Clerk of the House of Delegates

*[Handwritten signature]*  
.....  
President of the Senate

*[Handwritten signature]*  
.....  
Speaker House of Delegates

The within *is approved* this the *1st*  
day of *April* ....., 1994.

*[Handwritten signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/94

Time 9:27 am