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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1976

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ENROLLED

SENATE BILL NO. 390

(By Mr. James, Mr. Hamilton & Mr. Nelson)

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PASSED May 15, 1976

In Effect ninety days from Passage

FILED IN THE OFFICE
JAMES R. McCARTNEY
SECRETARY OF STATE

THIS DATE 5/26/76

390-VE10ED

ENROLLED

Senate Bill No. 390

(By MR. JONES, MR. HAMILTON and MR. NELSON)

[Passed May 15, 1976; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, three and four, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, seven, eight, nine, ten, eleven, thirteen, fourteen and fifteen, article five; to further amend said article five by adding thereto two new sections, designated sections sixteen and seventeen; to amend and reenact section two, article five-a; to amend and reenact sections one, two, three, four and five, article six; to further amend said article six by adding thereto two new sections, designated sections six and seven; to amend and reenact article six-a of said chapter; to amend and reenact section six, article seven; and to further amend said article seven by adding two new sections, designated sections one and twenty-seven, all of said chapter forty-nine, all relating to purpose; definitions of child, neglected child, and delinquent child; jurisdiction of court over juveniles; noncustodial counseling of a child; petitioning the court for disposition of suspected delinquents, warrants and notice to child and parents; taking a child into custody; probable cause hearing and improvement period; transfer of jurisdiction; hearings and adjudications; disposition and appeal; modification of dispositional orders; juvenile probation officers; committing children to jail; expungement of records and no discrimination; investigation and release of child taken into custody; petition to court when child believed neglected; notice; right to counsel; hearing; temporary custody; improvement period; examinations; disposition of neglected children; modification of dispositional orders; consensual termination; reports of children suspected of being abused or

neglected; confidentiality; enforcement of order for support; and emancipation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-1. Purpose.

- 1 (a) The purpose of this chapter is to secure for each
2 child under juvenile jurisdiction of the circuit court such
3 care and guidance, preferably in his own home, as will
4 serve the spiritual, emotional, mental, and physical welfare
5 of the child to preserve and strengthen the child's family
6 ties whenever possible with recognition to the funda-
7 mental rights of parenthood and with recognition of the
8 state's responsibility to assist the family in providing the
9 necessary education and training, removing the child
10 from the custody of parents only when the child's wel-
11 fare, or the safety and protection of the public cannot
12 be adequately safeguarded without removal; and, when,
13 as a last resort, the child has to be removed from his own
14 family, to secure for him custody, care, and discipline
15 as nearly as possible equivalent to that which should
16 have been given by his parents.
- 17 (b) The child welfare service of the state shall be
18 administered by the state department of welfare and the

19 licensing board herein provided in accordance with the
20 provisions of this chapter.

21 The state department of welfare is designated as the
22 agency to cooperate with the United States department
23 of health, education and welfare and United States de-
24 partment of justice in extending and improving child
25 welfare services, to comply with regulations thereof, and
26 to receive and expend federal funds for these services.

§49-1-2. "Child" defined.

1 "Child" means any person under eighteen years of age.
2 Once a child is transferred to a court with criminal juris-
3 diction pursuant to section ten of article five of this
4 chapter, he nevertheless remains a child for the purposes
5 of the applicability of the provisions of this chapter, with
6 the exception of sections one through fourteen of article
7 five of this chapter.

§49-1-3. "Neglected child" and "abused child" defined.

1 "Abused child" means a child:

2 Whose parent or guardian inflicts or attempts to in-
3 flict, or allows to be inflicted as a result of inadequate
4 supervision, physical injury upon the child which seriously
5 endangers the present physical health of such child, or
6 inflicts sexual abuse upon the child.

7 "Neglected child" means a child:

8 (1) Whose physical or mental condition is substan-
9 tially impaired as a result of the present refusal or neglect
10 of the child's parent or guardian to supply the child with
11 necessary food, clothing, shelter, medical care, or educa-
12 tion, notwithstanding efforts of the state department to
13 remedy the inadequacy, and the condition is not due
14 primarily to the lack of financial means of the parent or
15 guardian.

16 (2) Who is presently without necessary food, clothing,
17 shelter, medical care, education, or supervision because of
18 the disappearance of prolonged absence of the child's
19 parent or guardian.

20 "Neglected child" does not mean a child:

21 (1) Whose parent, parents or guardian have failed to
22 provide him with medical care because such medical care

23 conflicts with the tenets and practices of a recognized or
24 religious denomination or order of which such parent,
25 parents or guardian is an adherent or member.

26 (2) Whose education is conducted within the provisions
27 of section one, article eight, chapter eighteen of this code.

§49-1-4. "Delinquent child" defined.

1 "Delinquent child" means a child:

2 (1) Who commits an act which would be a crime if
3 committed by an adult, punishable by confinement in the
4 county jail or imprisonment, excepting traffic offenses.

5 (2) Who commits an act designated a crime under a
6 municipal ordinance, excepting traffic law offenses, or
7 state law not punishable by confinement in the county
8 jail or imprisonment.

9 (3) Who, without just cause, habitually and continually
10 refuses to respond to the supervision legally required of
11 such child's parents or guardians.

12 (4) Who is habitually truant from school without good
13 cause.

ARTICLE 5. JUVENILE JURISDICTION.

**§49-5-1. Jurisdiction of circuit courts over persons under
eighteen years of age.**

1 The circuit court of the county shall have original
2 jurisdiction in proceedings brought by petition under this
3 article. The circuit court shall hear and determine
4 criminal charges in the manner provided in this article,
5 including a charge of violation of a municipal ordinance,
6 against a person who is under eighteen years of age at the
7 time of the alleged offense.

8 If during the pendency of a criminal proceeding against
9 a person in any court, other than a circuit court pursuant
10 to this article, it shall be ascertained, or it shall appear,
11 that the person was under the age of eighteen years at
12 the time of the alleged offense, such court, judge, justice
13 of the peace or magistrate shall immediately transfer the
14 case with all the papers, documents, and testimony con-
15 nected therewith to the circuit court. The circuit court
16 shall proceed to hear and dispose of the case in the same

17 manner as if it had been instituted in that court in the
18 first instance: *Provided*, That for violations of the traffic
19 laws of West Virginia as contained in chapter seventeen-c
20 of this code, or for the violation of a municipal traffic
21 ordinance, justices of the peace courts, magistrate courts
22 and municipal courts when appropriate shall have con-
23 current jurisdiction with the circuit court and such per-
24 sons under the age of eighteen years shall be liable for
25 punishment for violation of such traffic statutes and ordi-
26 nances in the same manner as adults.

27 Any person who is under the age of eighteen years shall
28 be entitled to be admitted to bail or recognizance in the
29 same manner as a person over the age of eighteen years,
30 and shall have the protection guaranteed by article three,
31 section five of the constitution of West Virginia, and also
32 the right to be admitted to bail or recognizance in the
33 same manner as a person over the age of eighteen years.

§49-5-2. Continuing jurisdiction of court.

1 As used in this article, a "child" shall include a person
2 under the age of eighteen years, or a person subject to
3 juvenile jurisdiction pursuant to this section. If a child
4 sixteen years of age or older commits an act which if
5 committed by an adult would be a crime and for such
6 act is adjudged delinquent, the jurisdiction of the court
7 may be retained until the child becomes twenty years
8 of age, with the same power over the child that the court
9 had prior to the child's becoming an adult, but the juris-
10 diction of the court shall not extend beyond the maximum
11 term which would have been imposed on an adult con-
12 victed of the same offense or beyond the child's twentieth
13 birthday, whichever is sooner. This shall not preclude
14 the exercise of jurisdiction in case the child, after be-
15 coming an adult, commits a violation of law. Any person
16 subject to the jurisdiction of this article may demand to
17 be tried as an adult in a circuit court. A person subject
18 to the provisions of this article may be brought before
19 the circuit court by either of the following means and
20 no other:

21 (a) By juvenile petition praying that the child be
22 adjudged neglected or delinquent.

23 (b) By certification from any other court before which
24 such child is brought, charged with the commission of a
25 crime.

26 (c) By warrant issued by a referee returnable to
27 the circuit court, charging a child with an act of de-
28 linquency.

§49-5-3. Noncustodial counseling of a child.

1 When a parent, guardian, or other person having custody
2 of the child seeks assistance from the state department
3 or other official relative to an alleged delinquent act of
4 such child the state department or other official may,
5 without institution of proceedings under this article, refer
6 the child to a counselor at the state department, at a
7 community mental health center, or other professional
8 counselor in the community. In the event the child re-
9 fuses to respond to such reference, the state department
10 may serve a notice by first class mail, or personal service
11 of process upon the child, setting forth the facts, stating
12 that the department will seek a noncustodial order from
13 the referee or court directing such child to submit to
14 counseling. The notice shall set forth the time and place
15 for the hearing on the matter. The court after hearing
16 may direct the child to participate in a noncustodial period
17 of counseling not to exceed six months. No information
18 obtained as the result of such counseling shall be admis-
19 sible in a subsequent proceeding under this article
20 excepting the dispositional proceeding.

**§49-5-7. Institution of proceedings by petition; notice to child
and parents; warrant.**

1 (a) A petition alleging that a child is a delinquent
2 child may be filed by a person who has knowledge of
3 the facts alleged. The petition shall be verified by the
4 petitioner, shall set forth the name and address of the
5 parent, guardian, or other person having custody and con-
6 trol of the child, if such name and address are known to
7 the petitioner, and shall be filed in the circuit court in the
8 county where the child may be. The petition shall be
9 reviewed by the prosecuting attorney prior to filing of

10 the petition to determine whether or not there are
11 reasonable grounds to believe the alleged facts are true
12 and are sufficiently serious to warrant court action.
13 The prosecuting attorney may refer the matter to a
14 state department worker or probation officer for pre-
15 liminary inquiry to determine whether the matter can
16 be resolved informally without the filing of a petition.
17 The petition shall contain: Reference to the specific
18 statutory provisions of this chapter which give the court
19 jurisdiction of the proceeding; specific allegations of all
20 conduct and facts upon which the petition is based, in-
21 cluding the time and place of the alleged conduct; how
22 such conduct constitutes delinquency within the statu-
23 tory definition including, in the case of a violation of
24 law or ordinances, a reference thereto; the right to have
25 counsel appointed and to consult with counsel at every
26 stage of the proceedings; and the relief sought.

27 Upon the filing of the petition, the court or referee
28 shall set a time and place for a preliminary hearing, as
29 provided in section nine of this article, and may appoint
30 counsel at such time of filing. A copy of the petition and
31 summons shall be served upon the respondent child by
32 either first class mail or personal service of process. If
33 a child does not respond to a summons served by mail,
34 no further proceeding may be held until such child is
35 served a copy of the petition and summons by personal
36 service of process.

37 (b) A parent or guardian shall be named in the petition
38 as respondent and shall be notified of the proceedings in
39 the same manner as set forth in subsection (a) of this sec-
40 tion, which shall require the person to appear with the
41 child at the time and place set for the proceedings. If such
42 respondent cannot be found after diligent search, service
43 may be by publication as a Class II legal advertisement in
44 compliance with the provisions of article three, chapter
45 fifty-nine of this code, and the publication area of such
46 publication shall be the county. A respondent duly
47 summoned shall appear on the day set for the pre-
48 liminary hearing or if notified by publication shall appear
49 and answer within twenty days after the date of publica-
50 tion.

51 (c) The answer shall have as evidence no greater
52 weight than the petition. In default of answer, a peti-
53 tion shall not be taken as confessed.

54 (d) The court or referee may, if he deems such action
55 absolutely necessary, after failure to secure attendance
56 by other means, order the issuance of a warrant against
57 the person having custody and control of the child to
58 bring the person having custody and control of the child
59 before the court or referee.

60 (e) In the event a child is charged with the commis-
61 sion of a crime, prior to the filing of a petition, the child
62 and his parents shall be afforded notice by petition of
63 all alleged violations of law and ordinances or other
64 matters to be raised in the course of the proceedings
65 under this article, the facts or allegations upon which the
66 alleged violations are based, and the right to have counsel
67 appointed and to consult with counsel at every stage
68 of the proceedings. In the event the child is in custody
69 the petition shall be filed within ninety-six hours of the
70 time custody was effectuated. In any proceeding under
71 this article the child's counsel shall be entitled to copies
72 of all social, investigative, and law-enforcement reports.

73 (f) The clerk of the court shall promptly notify the
74 state department of proceedings under this article
75 whether instituted by petition or certification and of
76 pending proceedings with regard thereto.

§49-5-8. Taking a child into custody; detention hearing.

1 (a) In proceedings instituted by the filing of a juvenile
2 petition, the circuit court may enter an order directing
3 that a child be taken into custody only if the petition
4 shows that grounds exist for the arrest of an adult in
5 identical circumstances or that the health, safety and
6 welfare of the child demand such custody. A detention
7 hearing shall be held without delay, but in no event shall
8 the delay exceed beyond the next succeeding judicial
9 day, excluding Saturday, and such child shall be released
10 on recognizance to his parent or guardian unless the find-
11 ings are made as specified in subsection (c) hereof.

12 (b) Absent a court order, a child may be taken into
13 custody by a law-enforcement official only if grounds exist

14 for the arrest of an adult in identical circumstances. Upon
15 being taken into custody the arresting officer shall im-
16 mediately notify the child's parent, guardian or, if the
17 parent or guardian cannot be located, a close relative.
18 Upon being taken into custody under arrest for a crime,
19 the arresting officer shall, unless the circumstances war-
20 rant otherwise, release the child into the custody of his
21 parents or guardians, and refer the matter to the prose-
22 cuting attorney or state department or probation officer
23 for proceedings under this article. If the child is not
24 immediately released to his parents or guardians, the
25 arresting officer shall, without undue delay, notify the
26 court or referee.

27 (c) A child in custody must immediately be taken
28 before a referee or judge and in no event shall a delay
29 exceed beyond the next succeeding judicial day, ex-
30 cluding Saturday. The child shall be informed of his
31 right to remain silent, that any statement may be used
32 against him and of his right to counsel, and no inter-
33 rogation shall be made without presence of a parent or
34 counsel. If the child or his parent or guardian has not
35 retained counsel, counsel shall be appointed forthwith.
36 If such child, parent or guardian has executed an affi-
37 davit showing that he cannot pay therefor, the court shall
38 allow to each attorney so appointed an amount not to
39 exceed two hundred dollars and such fee shall be paid
40 by the state auditor in the same manner as fees for
41 appointed counsel are paid in felony cases. In all other
42 cases wherein counsel is appointed, the court shall order
43 such parent or guardian to pay a reasonable attorney fee.
44 Such referee or judge shall hear testimony concerning
45 both the circumstances for taking the child into custody,
46 probable cause, and the possible need for detention, in
47 accord with section two, article five-a of this chapter.

48 If there is shown to be sufficient grounds for the ar-
49 rest, including probable cause for the offense, the child
50 shall be released on recognizance to his parent or guardian
51 unless it is found: (1) there is reasonable cause to believe
52 that the child will be unavailable for court proceedings
53 if the child is not detained; or (2) there is reasonable
54 cause to believe that the child will commit a serious of-

55 fense involving serious injury to person if the child is not
56 detained. In such instances, reasonable bail may be re-
57 quired. The findings and order shall be made in accord
58 with section three, article five-a of this chapter. If suffi-
59 cient grounds for the arrest and probable cause are not
60 shown, the child shall be released.

61 (d) In the event that a child is delivered into the
62 custody of a sheriff or director of a detention facility,
63 such sheriff or director shall immediately notify the judge
64 of the circuit court or his referee. In all cases when a child
65 is taken into custody, he shall be released to his parent
66 or guardian, unless circumstances warrant otherwise,
67 within twenty-four hours of custody unless the child has
68 been placed in detention pursuant to subsection (c) of
69 this section. Said sheriff or director shall provide to every
70 child upon being delivered into his custody, a written
71 statement explaining the child's right to a prompt deten-
72 tion hearing, his right to counsel including appointed
73 counsel if he cannot afford counsel, and his privilege
74 against self-incrimination.

§49-5-9. Preliminary hearing; counsel; improvement period.

1 (a) The circuit court or referee shall hold a hearing
2 to review whether or not there exists probable cause to
3 believe that the child committed the alleged offense.
4 In the event that the child is in custody, such hearing shall
5 be held within seven days of the time he is taken into
6 custody unless good cause be shown for a continuance for
7 a reasonable time. If the judge is in another county in the
8 circuit, then the hearing may be conducted in such county.
9 If no such hearing is held within seven days of the arrest
10 or taking into custody, then the child must be released on
11 recognizance, unless the hearing has been continued in
12 accordance with the provisions of this subsection.

13 At the hearing, the court or referee shall:

14 (1) Appoint counsel by order entered of record, if
15 counsel has not been retained or has not been appointed
16 earlier in the proceeding. In all proceedings under the
17 provisions of this article, the child shall have the right

18 to be effectively represented by counsel, at all stages of
19 the proceedings, and the child and his parents, his
20 guardian, his custodian, or any other person standing in
21 loco parentis to him, or the person named in the petition,
22 must be informed at such probable cause hearing of the
23 child's right to be so represented, and if neither the child
24 nor any other of the aforementioned persons can pay for
25 the services of counsel, that competent counsel will be
26 appointed to represent the child. The court or referee
27 shall, by order entered of record, appoint an attorney-at-
28 law to represent such child's interest, and such attorney
29 shall be paid in accordance with the provisions of subsec-
30 tion (c), section eight of this article.

31 (2) Determine after hearing if there is probable cause
32 that the child is a delinquent child in violation of this
33 article. If probable cause is not found, the child shall be
34 released, and the proceedings dismissed. If probable cause
35 is found, the adjudicatory hearing shall be set and at a
36 time which will give the child, the child's parents and
37 attorney at least ten days' notice, unless notice be waived
38 by all parties.

39 (3) In accordance with the provisions of section ten of
40 this article, make a decision or recommendation relative to
41 the transfer of the proceeding to a criminal proceeding.
42 Upon a determination by the court that the circumstances
43 did not warrant transfer, the decision may not be revoked
44 at a later time.

45 (4) If the child is in custody, review the earlier
46 decision on custody and the amount of bail, if any. The
47 child shall be released on recognizance to his parent or
48 guardian unless the court finds: (i) there is reasonable
49 cause to believe that the child will run away so as to be
50 unavailable for court proceedings if the child is not
51 detained; or (ii) there is reasonable cause to believe
52 that the child will commit a serious offense involving
53 injury to person or substantial damage to property if the
54 child is not detained. If not detained in a detention facility
55 and if warranted as a last resort, the court may place
56 temporary custody of the child in the manner provided in
57 article two of this chapter, or may order the child placed

58 in the custody of a probation officer. If the child is de-
59 tained in custody, the detention shall not continue longer
60 than thirty days without commencement of the adjudi-
61 catory hearing.

62 (5) Inform the child of the right to demand a jury
63 trial, and to make this demand at any time up to the day
64 of the trial.

65 (b) The child may move to be allowed an improvement
66 period for a period not to exceed one year upon such
67 terms as the court might direct, and the child consents. If
68 the court is satisfied that the best interest of the child
69 might be served by an improvement period, the court
70 may allow a noncustodial improvement period upon terms
71 calculated to serve the rehabilitative needs of the child,
72 and delay the adjudicatory hearing thereby. At the
73 conclusion thereof the court shall upon the fulfillment of
74 the terms and conditions dismiss the proceeding; other-
75 wise the court shall proceed to the adjudicatory stage. A
76 motion for an improvement period shall not be construed
77 as an admission of any sort or be used as evidence. In a
78 subsequent adjudicatory proceeding, testimony from per-
79 sons involved in the supervision of such child during an
80 improvement period shall not be admissible.

§49-5-10. Transfer of jurisdiction.

1 (a) Upon motion of the prosecuting attorney, upon
2 the recommendation of the referee, or upon its own mo-
3 tion, the court may after the hearing at the time specified
4 in section nine of this article, transfer to a criminal pro-
5 ceeding, the case of a child who is alleged to have com-
6 mitted an offense on or after the child's sixteenth birth-
7 day, which, if committed by an adult, would be a felony.
8 Such motion shall state that the transfer from a juvenile
9 proceeding to a criminal proceeding is being sought, the
10 grounds therefor, and the consequences of such a deter-
11 mination, and shall be served upon the child, his parents
12 or guardians, and their counsel not less than seventy-two
13 hours before the hearing in accordance with the provisions
14 of section seven of this article. The child's counsel shall
15 be afforded access to all social and investigative reports.

16 If the child's counsel is appointed at the preliminary
17 hearing, then the court shall continue the hearing for a
18 period of not less than five days to allow counsel to pre-
19 pare for the transfer hearing, unless counsel indicates that
20 he is prepared to proceed.

21 (b) If probable cause is found, as provided in section
22 nine of this article, the circuit court or referee may, after
23 hearing conducted in accord with subsection (a) of sec-
24 tion eleven of this article, transfer the proceeding to a
25 criminal proceeding only as a last resort and only if there
26 is clear, cogent and convincing proof that: (i) the offense
27 allegedly committed by the child was one of violence and
28 premeditation and evidences a pattern of conduct which
29 constitutes a substantial danger to the public; and (ii)
30 there are no reasonable prospects for rehabilitating the
31 child through resources available to the court under this
32 article; with reference to such rehabilitation prospects
33 the court shall consider the child's mental and physical
34 condition, maturity, emotional attitude, home or family
35 environment, school experience and the like. The burden
36 of proof of such a determination shall rest on the peti-
37 tioner.

38 Counsel for the child cannot waive the hearing on
39 transfer on behalf of the child. Failure to object to the
40 transfer shall not constitute a waiver.

41 (c) If the circuit court transfers the proceeding to a
42 criminal proceeding, the court's findings of fact and con-
43 clusions of law shall be incorporated within the order.
44 The child shall have the right to appeal from this order.
45 A transfer order relates to the offense before the court
46 at the time of the hearing. Testimony of a child at a
47 transfer hearing conducted pursuant to this section shall
48 not be admissible or otherwise used in a criminal pro-
49 ceeding or at the adjudicatory hearing under this article.

§49-5-11. Hearings; adjudication.

1 (a) In all proceedings under the provisions of this
2 article, the child shall be afforded a meaningful oppor-
3 tunity to be heard, including the opportunity to testify
4 and to present and cross-examine witnesses. In such
5 proceedings the general public shall be excluded except

6 persons whose presence is requested by a child or re-
7 spondent. The court may admit other persons it finds
8 to have a legitimate interest. Counsel shall effectively
9 represent the child at every stage of any such proceeding.
10 Counsel for the child shall be afforded access to all so-
11 cial, investigative and medical reports. The rules of evi-
12 dence shall apply and reports based upon hearsay are
13 inadmissible. All procedural rights afforded adults shall
14 be applicable, and the child need not be a witness against
15 himself. Extrajudicial statements made to law-enforce-
16 ment officials, or while in custody, made outside the pres-
17 ence of a child's parent, guardian or counsel shall not be
18 admissible. A transcript or recording shall be made of
19 all adjudicatory or transfer hearings before the cir-
20 cuit court. Of the rights of a child which are sub-
21 ject to waiver, a waiver by a child may be accom-
22 plished only by an affirmative statement by a competent
23 child on the record after a complete explanation by the
24 court of the rights, the consequences of the waiver, and
25 an inquiry sufficient to assure the child's understanding
26 of the consequences of the waiver. At the conclusion of
27 a hearing, the court shall make findings of fact and con-
28 clusions of law.

29 (b) At the outset of an adjudicatory hearing, the court
30 shall inquire of the child whether he wishes to admit
31 or deny the allegations in the petition. If the respondent
32 child admits the allegations of the petition the court
33 shall conclude the admission to be proof of the allegations
34 if the court finds (1) the respondent fully understands
35 all his rights under this section and his right to trial by
36 jury, (2) the respondent voluntarily, intelligently, and
37 knowingly admits to all facts requisite for an adjudica-
38 tion, and (3) the respondent in his purported admission
39 has not set forth facts which constitute a defense to the
40 allegations. A plea of admission shall not be construed
41 as a waiver of a defective petition or notice. If the re-
42 spondent child denies the allegations, the court shall
43 dispose of all pretrial motions and the court or jury shall
44 proceed to hear evidence. If the allegations in the peti-
45 tion are sustained by proof beyond a reasonable doubt,
46 the court shall schedule the matter for disposition; other-

47 wise the petition shall be dismissed and the child dis-
48 charged from custody. The findings of fact and conclu-
49 sions of law addressed to all allegations in the petition
50 shall be incorporated into the order of the court.

§49-5-13. Disposition; appeal.

1 (a) Following the adjudication, the court shall conduct
2 the dispositional proceeding, giving both the petitioner and
3 the respondents an opportunity to be heard. In disposition
4 the court shall give precedence to the least restrictive
5 alternative requisite to provide the child's needs:

6 (1) Dismiss the petition.

7 (2) Refer the child and the child's parent or guardian
8 to a community agency for needed assistance and dismiss
9 the petition.

10 (3) Upon a finding that the child is in need of extra-
11 parental supervision, order the child placed under the su-
12 pervision of a probation officer or other supervisor, under
13 terms of supervision calculated to assist or benefit the child,
14 which prescribe or limit the child's activities and which
15 are reasonable and within the child's ability to perform.

16 (4) Upon a finding that a parent or guardian is not
17 willing to take custody of the child, that a child is not
18 willing to reside in the custody of his parent or guardian,
19 or that a parent or guardian cannot provide the necessary
20 supervision and care of the child, the court may place
21 the child in temporary foster care, or commit the child
22 to the state department or a child welfare agency. In
23 the event the court treats the child as a neglected child,
24 the provisions of article six of this chapter shall apply.

25 (5) Upon a finding that no less restrictive alternative
26 would accomplish the requisite rehabilitation of the child,
27 and upon an adjudication of delinquency pursuant to
28 subsection (1), section four of article one of this chapter,
29 commit the child to an industrial home or correctional
30 institution for children. All such commitments shall be for
31 an indeterminate period not to exceed a specified maxi-
32 mum, with discretion as to discharge with the director of
33 such institution.

34 (6) After a hearing conducted under the procedures set
35 out in subsections (c) and (d) of section four, article
36 five, chapter twenty-seven of this code, unless waived by
37 the child, commit the child to a mental health facility for
38 an indefinite term, not to exceed the sentence prescribed
39 for the act the child allegedly committed or the termina-
40 tion of juvenile jurisdiction. Discretion as to discharge
41 in such a case will rest with the clinical director or the
42 mental health facility in accordance with the child's
43 treatment plan.

44 (b) The disposition of the child shall not be affected
45 by the fact that the child demanded a trial by jury or
46 makes a plea of denial. No child shall be given a custodial
47 disposition in an institution or correctional facility longer
48 than the sentence or resulting custodial period an adult
49 could receive for the same offense. The burden of demon-
50 strating the lack of a less restrictive alternative rests
51 upon the petitioner, and the court shall make findings
52 of fact with respect thereto. The dispositional order is
53 subject to appeal.

54 (c) Following disposition, it shall be inquired of the
55 respondents whether or not appeal is desired and the
56 response transcribed; a negative response shall not be
57 construed as a waiver. The evidence shall be transcribed
58 and made available to the child or his counsel as soon
59 as practicable, if the same is requested for purposes of
60 further proceedings. A judge may grant a stay of execu-
61 tion pending further proceedings. In any case wherein
62 an indigent person seeks review of any proceeding under
63 this article, and an affidavit is filed in accordance with
64 section one, article two, of chapter fifty-nine of this code,
65 the court reporter shall furnish a transcript of the re-
66 quested proceedings without cost to the person.

67 (d) In aid of disposition, the juvenile probation of-
68 ficer or state department worker assigned to the court
69 shall, upon request of the court, make an investigation of
70 the case including the environment of the child and the
71 alternative dispositions including the benefits to the child
72 from alternative placements. The court, upon its own
73 motion, or upon request of counsel, may order a psycho-
74 logical examination and report made to the court. Such

75 reports and other investigative and social reports shall
76 not be made available to the court until the dispositional
77 stage; no later than seventy-two hours prior to the dis-
78 positional hearing copies shall be provided to counsel for
79 the petitioner and the child.

§49-5-14. Modification of dispositional orders.

1 A dispositional order of the court may be modified:
2 (1) Upon the motion of the probation officer, a state de-
3 partment official, or prosecuting attorney. If the modifi-
4 cation of the dispositional order involves a change in
5 custody, notice shall be given to the child's counsel; or
6 (2) upon the request of the child or a child's parent or
7 guardian who alleges a change of circumstances relating
8 to disposition of the child, and upon such a request, the
9 court shall conduct a review proceeding, except that if
10 the last dispositional order was within the previous six
11 months the court may grant or deny the review.

12 In connection with a proceeding to review a disposi-
13 tional order, upon request or motion, notice in writing
14 of the proceeding shall be given to the child, his counsel,
15 the child's parent or guardian and their counsel not less
16 than seventy-two hours prior to the proceeding. The
17 court shall review the performances of the child, the
18 child's parent or guardian, the child's worker and other
19 persons providing assistance to the child or child's family.
20 If the request for review of disposition is based upon an
21 alleged violation of a court order, the court may, within
22 one year after the entry of the initial dispositional order,
23 modify or extend the dispositional order to a more restric-
24 tive alternative if it finds clear, cogent and convincing
25 proof of substantial violation. Otherwise, the disposi-
26 tional order may be modified only to a less restrictive
27 alternative as set forth in section thirteen of this article.
28 A proceeding to modify a dispositional order may not
29 be used in circumvention of a full delinquency proceeding
30 based upon new or other circumstances or facts alleging
31 a violation of a law or ordinance.

§49-5-15. Juvenile probation officers; duties; expenses; powers.

1 (a) The commissioner of the state department of wel-
2 fare shall, with the approval of the court, designate one

3 of the employees of the state department of welfare to
4 act as a juvenile probation officer, and when required
5 one or more employees of the state department of wel-
6 fare to act as assistant or assistants to such probation
7 officer, and such employee or employees, when so as-
8 signed, shall perform their duties under the sole super-
9 vision and control of the court and the court shall have
10 the sole power to recommend the transfer or dismissal
11 of employees so assigned. There shall be at least one
12 such juvenile probation officer assigned to each county,
13 but a juvenile probation officer may be assigned to more
14 than one county.

15 The foregoing provisions of this section shall not be
16 construed as abrogating or affecting in any way the
17 power and authority vested in any court, subject to the
18 approval of and in accordance with the rules of the
19 supreme court of appeals, to select, supervise and dis-
20 charge its own probation officers and assistants thereto.

21 (b) The clerk of a court shall notify, if practicable,
22 the chief probation officer of the county when a child is
23 brought before the court or judge. When notified, or
24 if the probation officer otherwise obtains knowledge of
25 such fact, he or one of his assistants shall:

26 (1) Make investigation of the case;

27 (2) Be present in court, or before the judge, to repre-
28 sent the interests of the child when the case is heard;

29 (3) Furnish such information and assistance as the
30 court or judge may require;

31 (4) Take charge of the child before and after the
32 trial, as may be directed by the court or judge.

§49-5-16. Committing children to jail.

1 (a) Except as hereinafter provided, a child under
2 eighteen years of age, whether delinquent or otherwise,
3 shall not be committed to a jail or police station, except
4 that any child over fourteen years of age who has been
5 committed to an industrial home or correctional institu-
6 tion may be held in the juvenile department of a jail
7 while awaiting transportation to the institution for a
8 period not to exceed ninety-six hours, and except that a

9 child over sixteen years of age who is charged with a
10 crime which would be a felony if committed by an adult,
11 may, upon an order of the court, be housed in a juvenile
12 detention portion of a central county facility, but not
13 within sight of adult prisoners. A child charged with
14 being delinquent under subsection (3) or (4), section
15 four, article one of this chapter, shall not be housed in a
16 detention or other facility wherein persons are detained
17 for criminal offenses.

18 (b) The supreme court of appeals shall prescribe
19 written policies and procedures covering the operation of
20 detention facilities for children and for any county facility
21 in which children might be housed. The chief administra-
22 tive officer of every state correctional or other state
23 institution wherein juveniles are housed shall prescribe
24 written policies and procedures governing the operation
25 of such institution. Said policies and procedures shall
26 include, but shall not be limited to, standards of cleanli-
27 ness, temperature and lighting; availability of medical and
28 dental care, provision of food, furnishings, clothing and
29 toilet articles; supervision; procedures for enforcing rules
30 of conduct consistent with due process of law; and visita-
31 tion privileges. The child shall have, at a minimum, the
32 following rights, and the policies prescribed shall insure
33 that:

34 (1) A child shall not be punished by physical force,
35 deprivation of nutritious meals; deprivation of family
36 visits, or solitary confinement;

37 (2) A child shall have the opportunity to participate
38 in physical exercise each day, including outdoor exercise;

39 (3) Except for sleeping hours a child in a state facility
40 shall not be locked alone in a room unless such child is
41 out of control;

42 (4) A child shall be provided his own clothing or
43 individualized clothing supplied by the facility which is
44 clean, and daily access to showers;

45 (5) A child shall have constant access to writing
46 materials, and may send mail without limitation, censor-
47 ship or prior reading, and may receive mail without prior

48 reading, except that mail may be opened in the child's
49 presence, without being read, to inspect for contraband;

50 (6) A child may make and receive regular local phone
51 calls without charge, and long distance calls to his family
52 without charge at least once a week, and receive visitors
53 daily and on a regular basis;

54 (7) A child shall have immediate access to medical care
55 as needed;

56 (8) A child in a juvenile detention facility or state
57 institution shall be provided access to education including
58 teaching and materials, and to reading materials;

59 (9) A child shall have reasonable access to an attorney
60 upon request; and

61 (10) A child shall be afforded a grievance procedure,
62 including an appeal mechanism.

63 Upon admission to a jail, detention facility, or institu-
64 tion a child shall be furnished with a copy of the rights
65 provided him by virtue of this section, and as further
66 prescribed by rules promulgated pursuant to this sec-
67 tion.

68 (c) The supreme court of appeals shall appoint and
69 maintain a five-member panel, consisting of five attor-
70 neys, who are willing to serve in such capacity, to visit,
71 inspect and interview residents of all juvenile institu-
72 tions, detention facilities and places in the state wherein
73 juveniles may be held involuntarily, to make public re-
74 ports of such reviews, and to perform such other duties
75 as shall be prescribed by the court. The members so
76 appointed shall serve without compensation for their
77 time.

§49-5-17. Expungement of records; no discrimination.

1 (a) On the second day of January of every year, the
2 court shall orally direct the expungement of all law-
3 enforcement files and records, including fingerprints,
4 and court files and records contained in the files and
5 records of government and private agencies regarding
6 every person having juvenile records in court with re-
7 gard to whom juvenile jurisdiction has terminated.

8 As used in this section, "expungement" means the phys-
9 ical destruction of all files and records.

10 (b) The court, upon its own motion or upon the
11 motion of a child or the child's parent or guardian,
12 may at any time order the expungement of law-enforce-
13 ment files and records, including fingerprints, and court
14 files and records pertaining to any juvenile proceeding
15 which does not result in an adjudication of delinquency.

16 (c) Notice of the expungement order shall be sent to
17 every agency which the court has reason to believe
18 may have information concerning the files and records
19 of the child. An agency receiving notice of the ex-
20 pungement order shall transmit copies of the notice to
21 all agencies to which it has forwarded information con-
22 cerning the law-enforcement files and records, including
23 fingerprints, or court files and records of the child.

24 (d) After the child's eighteenth birthday or after
25 termination of juvenile jurisdiction, whichever is later,
26 a proceeding conducted under this chapter shall be
27 deemed never to have occurred. The child, the child's
28 parent or guardian, the court, law-enforcement agen-
29 cies, and other governmental and private agencies,
30 in response to a request for record information or relative
31 to the subject matter thereof, shall reply that a law-
32 enforcement record, court record or proceedings or
33 arrests with respect thereto does not exist and never
34 occurred with respect to that person.

35 (e) No individual, firm, corporation or other entity
36 shall, on account of a person's prior involvement in a
37 proceeding under this article, exclude from or otherwise
38 discriminate against any such person in access to, terms of
39 or conditions of employment, housing, credit, contractual
40 rights, or otherwise.

ARTICLE 5A. JUVENILE REFEREE SYSTEM.

§49-5A-2. Investigation and release of child taken into custody; detention hearings.

1 A child who has been arrested or who under color of law
2 is taken into the custody of any officer or employee of the
3 state or any political subdivision thereof shall be forth-

4 with afforded a hearing to ascertain if such child shall
5 be further detained. In connection with any such hear-
6 ing, the provisions of section sixteen, article five of this
7 chapter shall apply. It shall be the duty of the judge or
8 referee to avoid incarceration of such child in any jail.
9 Unless the circumstances of the case otherwise require,
10 taking into account the welfare of such child as well as
11 the interest of society, such child shall be forthwith
12 released into the custody of his parent or parents, rela-
13 tive, guardian or other responsible adult or agency.

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

§49-6-1. Petition to court when child believed neglected or abused; notice.

1 (a) If the state department, or a reputable person,
2 believes that a child is neglected or abused, the depart-
3 ment or the person may present a petition setting forth
4 the facts to the court in the county in which the child
5 resides, or to the judge of such court in vacation. The
6 petition shall be verified by the oath of some credible
7 person having knowledge of the facts. The petition
8 shall contain specific conduct and facts relative to
9 all allegations to be raised in the proceeding including
10 time and place, how such conduct contravenes the statu-
11 tory definition with references thereto, and the relief
12 sought. Upon filing of the petition, the court or judge
13 shall set a time and place for a hearing, and the court may
14 appoint counsel at this time. When there is an order for
15 temporary custody pursuant to section three of this article,
16 such hearing shall be held within thirty days of such
17 order, unless a continuance is granted for a reasonable
18 time, to a date certain, for good cause shown.

19 (b) At the time of filing of the petition, the petition
20 and notice of the hearing shall be served upon the per-
21 son or persons having custody of the child giving such
22 person at least ten days' notice, and notice shall be given
23 to the state department. In cases wherein personal ser-
24 vice cannot be obtained after due diligence, notice shall
25 be by publication as a Class II legal advertisement in
26 compliance with the provisions of article three, chapter

27 fifty-nine of this code. A notice of hearing shall specify:
28 The time and place of the hearing, the nature of all
29 allegations to be raised at the hearing, the right to
30 counsel of the child and parents or other guardians at
31 every stage of the proceedings, and the right of the child
32 and of all parents or other guardians to a physical, psy-
33 chological, or psychiatric examination by an independent
34 expert of their own choice, and the fact that such pro-
35 ceedings can result in the permanent termination of the
36 parental rights. Failure to object to defects in the petition
37 and notice shall not be construed as a waiver.

38 (c) Prior to the institution of any proceeding under
39 the article, the state department shall, except where there
40 exists imminent danger to the life of the child, provide
41 supportive services in an effort to remedy circumstances
42 detrimental to a child.

§49-6-2. Same—Right to counsel; hearing.

1 (a) In any proceeding under the provisions of this
2 article, the child, his parents, guardians of his person, his
3 custodian, or other persons standing in loco parentis to
4 him, such persons other than the child being hereinafter
5 referred to as other party or parties, shall have the right
6 to be represented by counsel at every stage of the pro-
7 ceedings, and shall be informed by the court or judge of
8 their right to be so represented, and that if they cannot
9 pay for the services of counsel, that counsel will be ap-
10 pointed to represent such child and such other party or
11 parties. In the event that such child has not retained
12 counsel and neither the child nor other parties can pay for
13 the services of counsel for such child, the court or judge
14 shall, by order entered of record, at least ten days prior
15 to the date set for hearing, appoint an attorney-at-law to
16 represent the child and so inform the parties; and in the
17 event that such other party or parties have not retained
18 counsel and are unable to pay for the services of counsel,
19 the court or judge shall, by order entered of record, at
20 least ten days prior to the date set for hearing, appoint an
21 attorney-at-law to represent such other party or parties.
22 Under no circumstances may the same attorney-at-law
23 represent both such child and such other party or parties.

24 The attorney appointed to represent the child shall
25 effectively pursue the desires of the child. In any pro-
26 ceeding under the provisions of this article, the court
27 or judge may, in his discretion, by order entered of
28 record, allow to each attorney so appointed a fee in an
29 amount not to exceed two hundred dollars. Any such
30 fee shall be paid by the state auditor in the same manner
31 as fees for appointed counsel are paid in felony cases.

32 (b) In any proceeding under this article, the party or
33 parties having custody of the child shall be afforded a
34 meaningful opportunity to be heard, including the
35 opportunity to testify and to present and cross-examine
36 witnesses. The petition shall not be taken as confessed.
37 A transcript or recording shall be made of all proceed-
38 ings. The rules of evidence shall apply and reports based
39 upon hearsay are inadmissible. Where relevant, the court
40 shall consider the efforts of the state department to
41 remedy the alleged circumstances. At the conclusion of
42 the hearing the court shall make a determination based
43 upon the evidence and shall make findings of fact and
44 conclusions of law which shall be incorporated into the
45 order of the court. The findings must be based upon con-
46 ditions existing at the time of the hearing, and proven
47 by clear, cogent and convincing proof. Following the
48 court's determination, it shall be inquired of the parents
49 or guardians whether or not appeal is desired and the
50 response transcribed; a negative response shall not be
51 construed as a waiver. The evidence shall be transcribed
52 and made available to the individual or his counsel as
53 soon as practicable, but not to exceed ninety days, if the
54 same is requested for purposes of further proceedings. In
55 any case wherein an indigent person intends to pursue
56 further proceedings, the court reporter shall furnish a
57 transcript of the hearing without cost, if an affidavit is
58 filed in accordance with section one, article two of chapter
59 fifty-nine of this code.

§49-6-3. Same—Temporary custody; improvement period.

1 (a) Until a hearing can be held upon the petition, the
2 court or judge may, after the filing of the petition,
3 and appointing counsel, if necessary, schedule a prelim-

4 inary hearing giving the respondents at least five days'
5 actual notice and after such hearing order that the child
6 be delivered into the custody of the department, or into
7 other such custody as the court or judge may deem proper,
8 for a period not exceeding thirty days, when the facts
9 alleged in the petition upon personal knowledge of the
10 petitioner, demonstrate to the court that there exists
11 imminent danger to such child, that there are no alterna-
12 tives less drastic than removal of the child, and that a
13 hearing cannot be scheduled in the interim period.

14 If the facts alleged in the petition are so compelling that
15 the child's physical well-being cannot wait the preliminary
16 hearing, and there is testimony from personal observation
17 from at least one witness or the petitioner demonstrating
18 such facts, the court may for a period not exceeding ten
19 days order that the child be delivered into the custody
20 of the state department, pending the preliminary hearing,
21 upon a finding that: (1) There exists imminent threat to
22 the physical well-being of the child, and (2) that there are
23 no alternatives less drastic than removal of the child,
24 including, but not limited to, the provision of medical,
25 psychiatric, psychological or homemaking services in the
26 child's present custody. The initial order directing such
27 custody shall expire of its own terms within ten days,
28 and shall contain an order appointing counsel and sched-
29 uling the preliminary hearing, and upon its service shall
30 require the immediate transfer of custody of such child to
31 the state department or responsible relative.

32 (b) In any proceeding under this article, the parents
33 or guardians may, prior to final hearing, move that such
34 person or persons be allowed an improvement period of
35 three to twelve months in order to remedy such circum-
36 stances or alleged circumstances upon which the proceed-
37 ing is based. The court may allow such an improvement
38 period, and may require temporary custody in the state
39 department or otherwise; and the allowance of such an
40 improvement period may be construed as a waiver of the
41 thirty-day limit upon custody pursuant to a temporary
42 order.

§49-6-4. Medical and mental examinations.

1 At any time during the proceedings under this article
2 the court may, of its own motion or otherwise, order the
3 examination by a physician, psychologist, or psychiatrist,
4 of the child or of any parent or other person having cus-
5 tody of the child at the time of the alleged neglect or
6 abuse. Likewise in any proceeding under this article, the
7 child or the parent or other person having custody of the
8 child at the time of the alleged neglect or abuse shall have
9 a right to have an examination by an independent expert
10 of his choice, and testimony from such witness as a medi-
11 cal witness on his behalf when relevant issues are raised
12 by the petition. The rules of evidence as provided by law
13 shall apply to such testimony, except that the physician,
14 psychologist, or psychiatrist shall be allowed to testify as
15 to conclusions reached from the hospital, medical, psy-
16 chological, or laboratory records, tests, or reports, relative
17 to the person examined, provided the same are produced
18 at the hearing. Persons so testifying shall be subject to
19 cross-examination as are other witnesses. The court by
20 order shall provide for the payment of such expert wit-
21 nesses. No evidence acquired as a result of any such
22 examination of the parent or any other person having
23 custody of the child may be used against such person in
24 any subsequent criminal proceedings against such person
25 or custodian.

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

1 (a) Following a determination pursuant to section two
2 of this article, the court may request from the state
3 department and review information relative to the history,
4 physical condition and present situation of the child, to
5 aid in disposition. The court shall forthwith proceed to
6 disposition giving both the petitioner and respondents an
7 opportunity to be heard. The court shall give precedence
8 to dispositions in the following sequence:

9 (1) Dismiss the petition.

10 (2) Refer the child and the child's parent or guardian
11 to a community agency for needed assistance and dismiss
12 the petition.

13 (3) Return the child to his own home under supervision
14 of the state department.

15 (4) Order terms of supervision, calculated to assist
16 the child and the child's parent or guardian, which
17 prescribe the manner of supervision and care of the child
18 and which are within the ability of the parent or guardian
19 to perform.

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

26 (6) Upon a finding that there is no reasonable like-
27 lihood that the conditions of neglect or abuse can be
28 substantially corrected in the near future, and when
29 absolutely necessary for the welfare of the child, terminate
30 the residual parental rights and responsibilities and com-
31 mit the child to the permanent care and guardianship of
32 the state department or of a licensed child welfare agency.
33 Notwithstanding any other provisions of this article, the
34 permanent parental rights shall not be terminated if the
35 child, being fourteen years of age or older or otherwise
36 of an age of discretion as determined by the court, objects
37 to such termination.

38 (b) As used in this section, "no reasonable likelihood
39 that conditions of neglect or abuse can be substantially
40 corrected" shall include a showing that: (1) The parent
41 or parents have habitually abused or are addicted to
42 intoxicating liquors, narcotics or other dangerous drugs to
43 the extent that proper parenting ability has been seriously
44 impaired and the parent has not responded to or followed
45 through with recommended and appropriate treatment
46 which could have improved the capacity for adequate
47 parental functioning; (2) the parent or parents have
48 willfully refused or are presently unwilling to cooperate
49 in the development of a foster care plan designed to lead
50 to the child's return to the parent or parents; (3) the
51 parent or parents have not responded to or followed
52 through with appropriate and reasonable rehabilitative

53 efforts on the part of social, medical, mental health or
54 other rehabilitative agencies outlined by the state de-
55 partment designed to reduce, eliminate or prevent the
56 neglect or abuse of the child as evidenced by the continua-
57 tion of substantial or repeated acts of neglect or abuse
58 after the provision of such services; (4) the parent or
59 parents have abandoned such child; or (5) the parent or
60 parents have repeatedly physically abused the child.

61 (c) The court may as an alternative disposition, at the
62 discretion of the court, allow to the parents or guardians
63 an improvement period not to exceed twelve months.
64 During this period, the parental rights shall not be
65 permanently terminated, and the court shall require the
66 parent to rectify the conditions upon which the deter-
67 mination was based. The court may order the child to
68 be placed with the parents, a relative or the state depart-
69 ment or other appropriate placement during the period.
70 At the end of the period, the court shall hold a hearing to
71 determine whether the conditions have been rectified,
72 and at the conclusion, shall make a further dispositional
73 order in accordance with this section.

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

1 (a) With the exception of a dispositional order pur-
2 suant to subsection (a) (6) of section five, the court may
3 modify a dispositional order under this article at any
4 time upon the motion of the child, the child's parent or
5 guardian, or the state department. A dispositional order
6 pursuant to subsection (a) (6) of section five shall not be
7 modified after the child has been adopted: *Provided*, That
8 no such adoption shall take place until all proceedings
9 relative to this article, or appeals thereof, are completed.
10 Upon request of a child or a child's parent or guardian
11 who alleges a change of circumstances relating to the dis-
12 position of the child, the court shall conduct a hearing
13 pursuant to section two of this article. Adequate and time-
14 ly notice of any motion for modification shall be given to
15 the child's counsel, counsel for the child's parent or
16 guardian, and to the state department.

17 (b) The court shall annually review the placements of
18 children placed in permanent care of the state department
19 who have not been adopted and continue in the legal
20 custody of the state department to the end that the
21 physical and emotional needs of such children are pro-
22 vided for.

§49-6-7. Consensual termination of parental rights. ..

1 No agreement of a natural parent in termination of
2 parental rights shall be valid unless it be in writing,
3 under oath, and entered into under circumstances free
4 of duress, coercion, emotional trauma and otherwise
5 with complete knowledge and understanding of the
6 consequences; and further, notwithstanding anything to
7 the contrary, except a writing executed pursuant to
8 article four of chapter forty-eight of this code, no such
9 writing shall preclude the right of a natural parent to
10 the custody of a child if the custody of such child is
11 sought within thirty days of the execution of such written
12 agreement.

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

§49-6A-1. Purpose.

1 It is the purpose of this article, through the complete
2 reporting of child abuse and neglect, to protect the best
3 interests of the child, to offer protective services in order
4 to prevent any further harm to the child or any other
5 children living in the home, to stabilize the home en-
6 vironment, to preserve family life whenever possible
7 and to encourage cooperation among the states in dealing
8 with the problems of child abuse and neglect.

**§49-6A-2. Persons mandated to report suspected abuse, sexual
abuse and neglect.**

1 When any physician, resident, intern, hospital per-
2 sonnel engaged in the admission, examination, care or
3 treatment of persons, nurse, osteopath, chiropractor,
4 podiatrist, medical examiner or coroner, dentist, optom-
5 etrist, or any other medical or mental health profes-
6 sional, christian science practitioner, religious healer,

7 school teacher or other school official or pupil personnel,
8 social service worker, day care worker or other child
9 care or foster care worker, or any peace officer or law-
10 enforcement official, has reasonable cause to suspect that
11 a child is a neglected or abused child, or observes
12 the child being subjected to conditions or circum-
13 stances that would reasonably result in abuse or neglect,
14 such person shall immediately report it or cause a report
15 to be made to the state department or child protective
16 services designated by the state department for the lo-
17 cality.

18 Whenever such person is required to report under this
19 article in his capacity as a member of the staff of a
20 medical or other public or private institution, school,
21 facility or agency, he shall immediately notify the per-
22 son in charge of such institution, school, facility or agency,
23 or his designated agent, who shall then also become re-
24 sponsible to report or cause reports to be made. How-
25 ever, nothing in this section or article is intended
26 to require more than one report from any such in-
27 stitution, school or agency; but neither is it intended
28 to prevent individuals from reporting on their own
29 behalf.

30 In addition to those persons and officials specifically
31 required to report situations involving suspected abused
32 or neglected children, any other person may make a
33 report if such person has reasonable cause to suspect
34 that a child has been abused or neglected in a home or
35 institution or observes the child being subjected to con-
36 ditions or circumstances that would reasonably result in
37 such abuse or neglect.

**§49-6A-3. Mandatory reporting to a medical examiner or a
coroner and a post-mortem investigation.**

1 Any person or official required under section one of
2 this article to report cases of children suspected of being
3 abused or neglected, including a member of the local state
4 department or other child service agencies, who has
5 reasonable cause to suspect that a child has died as a
6 result of child abuse, or neglect, shall report that fact to
7 the appropriate medical examiner or coroner. The medical

8 examiner or coroner shall accept the report for investiga-
9 tion and shall report his findings to the police, the appro-
10 priate prosecuting attorney, the local child protective
11 service agency and, if the institution making a report is a
12 hospital, to the hospital.

§49-6A-4. Color photographs and x-rays.

1 Any person required to report cases of children sus-
2 pected of being abused and neglected, may take or cause
3 to be taken, at public expense, color photographs of the
4 areas of trauma visible on a child and, if medically in-
5 dicated, cause to be performed radiological examinations
6 of the child. Any photographs or x-rays taken shall be
7 sent to the mandated receiving agency as soon as possible.
8 Whenever such person is required to report under this
9 article, in his capacity as a member of the staff of a
10 medical or other private or public institution, school,
11 facility or agency, he shall immediately notify the person
12 in charge of such institution, school, facility or agency,
13 or his designated delegate, who shall then take or cause to
14 be taken, at public expense, color photographs of physical
15 trauma and shall, if medically indicated, cause to be
16 performed a radiological examination of the child.

§49-6A-5. Reporting procedures.

1 Reports of children suspected or known to be neglected
2 or abused pursuant to this article shall be made imme-
3 diately by telephone to the local state department or
4 designee, and shall be followed by a written report within
5 forty-eight hours if so requested by the receiving agency.
6 The state department may establish and maintain in the
7 state center a twenty-four hour, seven-day-a-week, toll-
8 free telephone number to receive such calls. When reports
9 are made directly to the state center, they shall be imme-
10 diately transferred to the appropriate local service.

11 To the extent possible, such reports shall include the
12 following information: The names and addresses of the
13 child and his parents or other persons responsible for his
14 care; the child's age, sex and race; the nature and the
15 extent of the child's injuries, neglect or abuse, including

16 any evidence of previous injuries, abuse or neglect to the
17 child or any other child in the same home; the name and
18 address of the person responsible for the injuries, abuse or
19 neglect; the family composition; the source of the report,
20 including the name of the person making the report, his
21 occupation and his address; any actions taken by the re-
22 porting source, including the taking of x-rays or color
23 photographs, temporary custody or notification of the cor-
24 oner or medical examiner; and any other information that
25 the person making the report believes may further the
26 purposes of this article.

27 A copy of this report shall immediately be made
28 available to the appropriate law-enforcement agency, the
29 prosecuting attorney or the coroner or medical examiner's
30 office for their consideration. Reports involving known or
31 suspected institutional child abuse or neglect shall be
32 made and received as all other reports made pursuant to
33 this article.

§49-6A-6. Immunity from liability.

1 Any person, official or institution participating in good
2 faith in any act permitted or required by this article
3 shall be immune from any civil or criminal liability that
4 otherwise might result by reasons of such actions.

§49-6A-7. Abrogation of privileged communications.

1 The privileged quality of communications between hus-
2 band and wife and between any professional person and
3 his patient or his client, except that between attorney and
4 client, is hereby abrogated in situations involving children
5 known or suspected to be abused or neglected. Such
6 privileged communications, excluding those of attorney
7 and client, shall not constitute grounds for failure to re-
8 port as required or permitted by this article, to cooperate
9 with the state department in its activities pursuant to this
10 article, or to give or accept evidence in any judicial pro-
11 ceeding pursuant to article six of this chapter.

§49-6A-8. Failure to report; civil liability.

1 Any person, official or institution required by this article
2 to report a case involving a child known or suspected to be

3 abused or neglected, who knowingly fails to do so or
4 knowingly prevents another person acting reasonably
5 from doing so, shall be civilly liable for the damages
6 proximately caused by such a failure.

§49-6A-9. Child protective services.

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

4 Except in cases involving institutional abuse or cases
5 in which police investigation also appears appropriate,
6 the child protective service shall be the sole public
7 agency responsible for receiving, investigating or arrang-
8 ing for investigation, and coordinating the investigation
9 of all reports of children known or suspected to be
10 abused or neglected. In accordance with the local plan
11 for child protective services, it shall provide protective
12 services to prevent further abuse or neglect of children
13 and provide for or arrange for and coordinate and mon-
14 itor the provision of those services necessary to insure
15 the safety of children. The local child protective service
16 shall be organized to maximize the continuity of respon-
17 sibility, care and service of individual workers for in-
18 dividual children and families.

19 Each local child protective service shall:

20 (1) Receive or arrange for the receipt of all reports
21 of children known or suspected to be abused or neg-
22 lected on a twenty-four hour, seven-day-a-week basis.

23 (2) Provide or arrange for emergency children's
24 services to be available at all times.

25 (3) Within twenty-four hours of notification of a
26 child suspected to be abused or neglected, commence or
27 cause to be commenced a thorough investigation of the
28 report.

29 The investigation shall include an evaluation of the
30 environment of the child named in the report and any
31 other children that may be in the same home; a deter-
32 mination of the risk to those children if they continue
33 to remain in the home; a determination of the nature,

34 extent and cause of any condition enumerated in the
35 initial report of a child relative to abuse or neglect; and
36 the name, age and condition of any other children living
37 in the same home.

38 Upon completion of the investigation, where appro-
39 priate, the local child protective service shall offer services
40 to the child or to the family. In those cases in which
41 the local child protective service determines that the
42 best interests of the child require court action, the local
43 child protective service shall initiate the appropriate
44 legal proceeding.

45 The local child protective service shall be responsible
46 for providing, directing or coordinating the appropriate
47 and timely delivery of services to abused children sus-
48 pected or known to be abused or neglected and their
49 families, including services to those responsible for the
50 child's care.

51 To carry out the purposes of this article, the local
52 child protective service may request and shall receive
53 from departments, boards, bureaus or other agencies of
54 the state or any of its political subdivisions or from any
55 duly authorized agency or any other agency providing
56 services under the local child protective service plan,
57 such cooperation, assistance and information as will en-
58 able it to fulfill its responsibilities, consistent with the
59 provisions of this chapter.

§49-6A-10. Education and training.

1 Within available funding and as appropriate, the state
2 department and the local child protective service shall
3 conduct a public and professional training program with
4 the staff of the state department, persons and officials
5 required to report, the general public and any other
6 appropriate persons, in order to encourage maximum
7 reporting of known and suspected child abuse, sexual
8 abuse and neglect and to improve communication, cooper-
9 ation and coordination among all agencies involved in the
10 identification, prevention and treatment of the abuse
11 and neglect of children. To the extent possible, such
12 training and educational programs shall include informa-

13 tion on the extent and nature of the problem, the duties
14 and responsibilities of persons required to report, the
15 duties and the functions of the state department, the
16 local departments of child services and therapeutic treat-
17 ment programs available to abused and neglected children
18 and their families.

ARTICLE 7. GENERAL PROVISIONS.

§49-7-1. Confidentiality of records.

1 All records of the state department, the court and its
2 officials, law-enforcement agencies and other agencies or
3 facilities relative to a child as defined in this chapter
4 shall be kept confidential, except that such records shall
5 be made available as follows: (1) Where authorized by
6 this chapter; (2) pursuant to subpoena or order of a
7 court of record: *Provided*, That a subpoena may be
8 quashed if the court determines that disclosure is not for
9 a bona fide purpose and compromises the confidentiality
10 intended by this section; (3) to the child, parent, or their
11 attorney, whether or not in connection with judicial pro-
12 ceedings; or (4) with the written consent of the child or
13 of someone authorized to act in the child's behalf. Other-
14 wise no records shall be released. The official court file
15 relative to the person who is subject to a neglect, abuse or
16 delinquency proceeding shall be open only to the inspec-
17 tion of the child, the child's parent or guardian, their
18 counsel and other parties to the proceedings before the
19 court. The court by order may open juvenile court files
20 to inspection by members of the news media or persons
21 doing research, on the condition that information which
22 would identify the child or family involved in the pro-
23 ceeding shall not be divulged.

24 Law-enforcement records and files concerning a child
25 shall be kept separate from the records and files of adults
26 not included within the court files except in juvenile pro-
27 ceedings which are transferred to criminal proceedings.
28 Law-enforcement records and files concerning such a child
29 shall be open to inspection of the prosecutor, probation
30 officer, state department workers, the child and the child's
31 parent or guardian, and the child's counsel, and to other
32 law-enforcement agencies when the information is rele-

33 want to a specific investigation regarding that child by
34 that agency.

35 Any violation of this section shall render each person
36 responsible liable for a civil penalty of three hundred
37 dollars or actual damages whichever is greater.

§49-7-6. Enforcement of order for support from wages.

1 If a person ordered to pay for the support, maintenance
2 and education of a child pursuant to a proceeding under
3 chapter forty-eight or forty-nine of this code is employed
4 for wages, salary, or commission, the court or judge may
5 order that the sum to be paid by him shall be paid to the
6 guardian, institution or organization or person having
7 custody of such child, out of his wages, salary, or com-
8 mission, and that he shall execute an assignment thereof
9 pro tanto: *Provided*, That no such order shall require the
10 payment of an amount in excess of twenty-five percent
11 of the person's disposable earnings or reduce his weekly
12 disposable earnings below thirty times the federal mini-
13 mum hourly wage. The court or judge may also order
14 the person to report to the court or judge, from time to
15 time, his place of employment and the amount earned by
16 him. Upon his failure to obey the order of the court or
17 judge, after proper notice and hearing, he may be pun-
18 ished as for contempt of court.

§49-7-27. Emancipation.

1 A child over the age of sixteen may petition a court to
2 be declared emancipated. The parents or guardians shall
3 be made respondents and in addition to personal service
4 thereon, there shall be publication as a Class II legal
5 advertisement in compliance with the provisions of article
6 three, chapter fifty-nine of this code. Upon a showing that
7 such child can provide for his physical and financial
8 well-being, and has the ability to make decisions for
9 himself, the court may for good cause shown declare the
10 child emancipated, and shall thereafter have full capacity
11 to contract in his own right. Thereafter the parents or
12 guardians have no right to the custody and control of
13 such child nor does the child have the right to care and
14 financial support from such parents or guardians. A child

15 over the age of sixteen who marries shall be emancipated
16 by operation of law. An emancipated child shall remain
17 a child as defined for the purposes of articles five and
18 five-a of this chapter.

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

James L. Davis
Chairman Senate Committee

Charles C. Chestnut, Jr.
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

J. P. Dillon, Jr.
Clerk of the Senate

Ed Blankenship
Clerk of the House of Delegates

W. B. Bortwell
President of the Senate

Lewis R. McManus
Speaker House of Delegates

The within *disapproved* this the *25th*
day of *May*, 1976

Anna M. Mang
Governor



PRESENTED TO THE
GOVERNOR

Date 5/21/76

Time 11:35 a.m.