

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1977

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ENROLLED

Committee Substitute for

SENATE BILL NO. 200

(By Mr. *Jones, Mr. Nelson, Mr. Hamilton, & Mr. Kucie*)

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PASSED April 5, 1977

In Effect ninty days from Passage

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COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 200

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

[Passed April 5, 1977; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, three, four and five, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article two by adding thereto a new section, designated section fourteen; to amend and reenact sections one, two, three, seven, eight, nine, ten, eleven, thirteen, fourteen and fifteen, article five; to further amend said article 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 three new sections, designated sections six, seven and eight; 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 thereto two new sections, designated sections one and twenty-seven, all of said chapter forty-nine, all relating to purpose; definitions of child, neglected child, abused child; removing child from foster home; jurisdiction of the juvenile court; 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; foster care review; consensual termination; reports of children suspected of being abused or neglected; confidentiality and civil liability for violation; penalty for failure to report; enforcement of order for support; and emancipation.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four and five, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article two be amended by adding thereto a new section, designated section fourteen; 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 three new sections, designated sections six, seven and eight; that article six-a 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 provide a com-
- 2 prehensive system of child welfare throughout the state
- 3 which will assure to each child such care and guidance,
- 4 preferably in his own home, as will serve the spiritual,
- 5 emotional, mental and physical welfare of the child;
- 6 preserve and strengthen the child's family ties whenever

7 possible with recognition to the fundamental rights of
 8 parenthood and with recognition of the state's responsi-
 9 bility to assist the family in providing the necessary educa-
 10 tion and training and protect the welfare of the general
 11 public. In pursuit of these goals it is the intention of the
 12 Legislature to provide for removing the child from the
 13 custody of parents only when the child's welfare or
 14 the safety and protection of the public cannot be adequate-
 15 ly safeguarded without removal; and, when the child has
 16 to be removed from his own family, to secure for him
 17 custody, care and discipline as nearly as possible equiv-
 18 alent to that which should have been given by his
 19 parents, consistent with the child's best interests.

20 (b) The child welfare service of the state shall be
 21 administered by the state department of welfare and the
 22 licensing board created by section four-a, article two of
 23 this chapter.

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

§49-1-2. "Child" defined.

1 "Child" means any person under eighteen years of
 2 age. Once a child is transferred to a court with criminal
 3 jurisdiction pursuant to section ten, 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 inflict
 3 or allows to be inflicted as a result of inadequate super-
 4 vision, physical injury upon the child which seriously
 5 endangers the present physical or mental health of such
 6 child or inflicts sexual abuse upon the child.

7 "Neglected child" means a child:

8 (1) Whose physical or mental condition is im-
9 paired or endangered as a result of the present
10 refusal, failure or inability of the child's parent or cus-
11 todian to supply the child with necessary food, clothing,
12 shelter, medical care or education, notwithstanding efforts
13 of the state department to remedy the inadequacy, and
14 the condition is not due primarily to the lack of financial
15 means of the parent or custodian; or

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

20 "Neglected child" does not mean a child:

21 (1) Whose parent or custodian has failed to provide
22 him with medical care because such medical care con-
23 flicts with the tenets and practices of a recognized or
24 religious denomination or order of which such parent or
25 custodian is an adherent or member; or

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
3 under state law or a municipal ordinance if committed
4 by an adult punishable by confinement in the county
5 jail or imprisonment;

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

9 (3) Who, without just cause, habitually and continu-
10 ally refuses to respond to the supervision legally required
11 of such child's parents or custodian; or

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

§49-1-5. Definitions of other terms.

1 For the purposes of this chapter:

2 (1) "State department" means the state department
3 of welfare;

4 (2) "State board" means the state advisory board;

5 (3) "Commissioner" means the commissioner of wel-
6 fare;

7 (4) "Child welfare agency" means any agency or in-
8 stitution maintained by a municipality or county, or any
9 agency or institution maintained by a person, firm, cor-
10 poration, association or organization to receive children
11 for care and maintenance or for placement in a family
12 home or day care center or any institution that provides
13 care for unmarried mothers and their children, but shall
14 not include county shelters established and maintained
15 for the detention of delinquent children or those charged
16 with delinquency;

17 (5) "Licensing board" means the state licensing board
18 created by section four-a, article two of this chapter;

19 (6) "Custodian" means a person who has actual physi-
20 cal possession or care and custody of a child, regardless
21 of whether such person has been granted custody of the
22 child by any contract, agreement or legal proceeding;

23 (7) "Referee" means a juvenile referee appointed pur-
24 suant to section one, article five-a of this chapter, ex-
25 cept that in any county which does not have a juvenile
26 referee the judge or judges of the circuit court may
27 designate one or more magistrates of the county to per-
28 form the functions and duties which may be performed
29 by a referee under this chapter;

30 (8) "Court" means the circuit court of the county with
31 jurisdiction of the case or the judge thereof in vacation
32 unless otherwise specifically provided.

ARTICLE 2. STATE AND COUNTY RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.

§49-2-14. Procedure for removal of child from foster home.

1 If at any time the state department is of the opinion
2 that a child in a foster care home is lacking the proper
3 care and supervision, it may terminate the foster care
4 arrangement: *Provided*, That unless the foster parents

5 have agreed in writing or unless the state department
6 is returning a child to its natural parents, the state de-
7 partment must apply to the circuit court for termination
8 of a foster care arrangement involving a child who has
9 resided in such foster home for a period in excess of
10 eighteen months. In such a case the court may terminate
11 the foster care arrangement only if it finds that the child
12 is lacking the proper care and supervision or a meaningful
13 relationship with the foster parents and that the state
14 department has a more suitable long-term arrangement
15 for care and custody.

ARTICLE 5. JUVENILE JURISDICTION OF THE COURTS.

**§49-5-1. Jurisdiction of circuit courts over persons under
eighteen years of age; constitutional guarantees;
right to counsel; hearings.**

1 (a) The circuit court of the county shall have
2 original jurisdiction in proceedings brought under this
3 article.

4 If during a criminal proceeding against a person in any
5 other court it shall be ascertained or shall appear that
6 the person was under the age of eighteen years at the time
7 of the alleged offense, such court, judge or magistrate
8 shall immediately certify the case to the circuit court by
9 transferring it with all the papers, documents and testi-
10 mony connected, and the circuit court shall assume juris-
11 diction of the case in the same manner as cases originally
12 instituted in the circuit court by petition: *Provided*, That
13 for violation of a traffic law of West Virginia or a munici-
14 pal ordinance, magistrate courts and municipal courts
15 shall have concurrent jurisdiction with the circuit court,
16 and persons under the age of eighteen years shall be
17 liable for punishment for violation of such traffic laws
18 and ordinances in the same manner as adults except
19 that magistrate courts and municipal courts shall have
20 no jurisdiction to impose a sentence of confinement for
21 the violation of traffic laws or ordinances.

22 As used in this section, "violation of a traffic law of
23 West Virginia" means violation of any law contained in
24 chapters seventeen-a, seventeen-b, seventeen-c and

25 seventeen-d of this code except sections one and two,
26 article four (hit and run) and sections one (negligent
27 homicide), two (driving under influence of alcohol, con-
28 trolled substances or drugs) and four (reckless driving),
29 article five, chapter seventeen-c of this code.

30 (b) Any child shall be entitled to be admitted to bail
31 or recognizance in the same manner as a person over the
32 age of eighteen years and shall have the protections
33 guaranteed by article three of the constitution of West
34 Virginia.

35 (c) The child shall have the right to be effectively
36 represented by counsel at all stages of proceedings under
37 the provisions of this article. If the child, parent or cus-
38 todian executes an affidavit showing that he cannot pay
39 for an attorney appointed by the court or referee, the
40 court shall allow the attorney so appointed an amount
41 to be paid in the same manner as fees for appointed
42 counsel are paid in felony cases. At any stage of the
43 proceedings the child's counsel shall be entitled to copies
44 of all social, investigative, medical and law-enforcement
45 reports, unless otherwise ordered by the court upon good
46 cause shown.

47 (d) In all proceedings under this article, the child
48 shall be afforded a meaningful opportunity to be heard in-
49 cluding the opportunity to testify and to present and
50 cross-examine witnesses. In such proceedings the general
51 public shall be excluded except persons whose presence
52 is requested by a child or respondent and other persons
53 the court finds to have a legitimate interest.

54 The rules of evidence shall apply including the rule
55 against written reports based upon hearsay. All proce-
56 dural rights afforded adults in criminal proceedings shall
57 be applicable. Extra-judicial statements other than res
58 gestae statements by a child made to law-enforcement
59 officials or while the child is in custody and outside the
60 presence of the child's counsel shall not be admissible.
61 A transcript or recording shall be made of all transfer,
62 adjudicatory and dispositional hearings. A waiver of any
63 rights which are subject to waiver by a child may be
64 accomplished only by an affirmative statement by a

65 competent child on the record after a complete explana-
66 tion by the court of the rights, the consequences of the
67 waiver and an inquiry sufficient to assure the child's
68 understanding of the consequences of the waiver. At the
69 conclusion of any hearing, the court shall make findings
70 of fact and conclusions of law.

71 (e) The court reporter shall furnish a transcript of
72 the relevant proceedings to any indigent child who seeks
73 review of any proceeding under this article if an affidavit
74 is filed stating that the child and his parent or custodian
75 are unable to pay therefor.

§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 the juvenile jurisdiction of the court pursuant to this
4 section. If a child sixteen years of age or older commits
5 an act which if committed by an adult would be a crime
6 and for such act is adjudged delinquent, the jurisdiction
7 of the court may be retained until the child becomes
8 twenty years of age with the same power over the child
9 that the court had prior to the child's becoming an adult,
10 and the further power to sentence the child to not more
11 than six months in jail if the child is between the ages
12 of eighteen and twenty years. This shall not preclude
13 the exercise of jurisdiction in case the child, after be-
14 coming an adult, commits a violation of law. Any child
15 over the age of sixteen years may demand to be tried as
16 an adult in a court of competent jurisdiction. A person
17 subject to the provisions of this article may be brought
18 before the circuit court by the following means and
19 no others:

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

22 (b) By certification from any other court before which
23 such child is brought charged with the commission of a
24 crime, as provided in section one of this article; or

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

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

1 Upon request for assistance from a parent or custodian,
2 the state department or other official may, without insti-
3 tution of proceedings under this article, refer a child
4 alleged to be delinquent to a counselor at the state de-
5 partment or a community mental health center or other
6 professional counselor in the community. In the event
7 the child refuses to respond to such reference the state
8 department may serve a notice by first class mail or
9 personal service of process upon the child, setting forth
10 the facts and stating that the department will seek a
11 noncustodial order from the court or referee directing
12 the child to submit to counseling. The notice shall set
13 forth the time and place for the hearing on the matter.
14 The court or referee after hearing may direct the child
15 to participate in a noncustodial period of counseling not
16 to exceed six months. No information obtained as the
17 result of such counseling shall be admissible in a subse-
18 quent proceeding under this article except a dispositional
19 proceeding.

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

1 (a) A petition alleging that a child is a delinquent
2 child may be filed by a person who has knowledge of or
3 information concerning the facts alleged. The petition
4 shall be verified by the petitioner, shall set forth the name
5 and address of the child's parents or custodians known
6 to the petitioner and shall be filed in the circuit court
7 in the county where the child may be found. The court
8 may refer the matter to a state department worker or
9 probation officer for preliminary inquiry to determine
10 whether the matter can be resolved informally without
11 the filing of a petition. The petition shall contain (1)
12 reference to the specific statutory provisions of this
13 chapter which give the court jurisdiction of the proceed-
14 ing; (2) specific allegations of the conduct and facts
15 upon which the petition is based, including the approxi-
16 mate time and place of the alleged conduct; (3) a state-
17 ment of the right to have counsel appointed and consult

18 with counsel at every stage of the proceedings; and (4)
19 the relief sought.

20 Upon the filing of the petition, the court or referee
21 shall set a time and place for a preliminary hearing as
22 provided in section nine of this article and may appoint
23 counsel. A copy of the petition and summons shall be
24 served upon the respondent child by first class mail or
25 personal service of process. If a child does not appear
26 in response to a summons served by mail, no further
27 proceeding may be held until the child is served a copy
28 of the petition and summons by personal service of
29 process.

30 (b) The parents or custodians shall be named in the
31 petition as respondents and shall be served with notice
32 of the proceedings in the same manner as provided in
33 subsection (a) of this section for service upon the child
34 and required to appear with the child at the time and
35 place set for the proceedings. If any such respondent
36 cannot be found after diligent search, service may be by
37 publication as a Class II legal advertisement in com-
38 pliance with the provisions of article three, chapter fifty-
39 nine of this code and the publication area shall be the
40 county. The respondent shall have thirty days after the
41 date of publication to appear or answer.

42 (c) The answer shall have as evidence no greater
43 weight than the petition. In default of answer a petition
44 shall not be taken as confessed, and no party shall be
45 required to answer the petition.

46 (d) The court or referee may, after failure to secure
47 attendance by other means, order the issuance of a sub-
48 poena against the person having custody and control of
49 the child to bring the child before the court or referee.

50 (e) When any case of a child charged with the com-
51 mission of a crime is certified to the circuit court or
52 brought before the court by warrant pursuant to section
53 one of this article, the court or referee shall forthwith
54 cause the child and his parents or custodians to be served
55 with a petition, as provided in subsections (a) and (b)
56 of this section. In the event the child is in custody the

57 petition shall be served within ninety-six hours of the
58 time custody began, or the child shall be released forth-
59 with.

60 (f) The clerk of the court shall promptly notify the
61 state department of all proceedings under this article.

§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 the next succeeding judicial day, ex-
9 cluding Saturday, and such child shall be released on
10 recognizance to his parent or custodian unless findings
11 are made as specified in subsection (c) of this section.

12 (b) Absent a court order, a child may be taken into
13 custody by a law-enforcement official only if grounds
14 exist for the arrest of an adult in identical circumstances.
15 Upon taking a child into custody, the arresting officer
16 shall: (1) Immediately notify the child's parent, custodian
17 or, if the parent or custodian cannot be located, a close
18 relative; (2) release the child into the custody of his
19 parent or custodian unless the circumstances warrant
20 otherwise; and (3) refer the matter to the prosecuting
21 attorney, state department or probation officer for pro-
22 ceedings under this article. If the circumstances do not
23 warrant the immediate release of the child, the arresting
24 officer shall without undue delay notify the court or
25 referee.

26 (c) In the event that a child is delivered into the cus-
27 tody of a sheriff or director of a detention facility, such
28 sheriff or director shall immediately notify the court or
29 referee. Said sheriff or director shall immediately pro-
30 vide to every child who is delivered into his custody,
31 a written statement explaining the child's right to a
32 prompt detention hearing, his right to counsel including
33 appointed counsel if he cannot afford counsel and his

34 privilege against self-incrimination. In all cases when
35 a child is delivered into custody, the child shall be released
36 to his parent or custodian by the end of the next succeed-
37 ing judicial day, excluding Saturday, after being delivered
38 into such custody, unless the child has been placed in
39 detention pursuant to subsection (d) of this section.

40 (d) A child in custody must immediately be taken be-
41 fore a referee or judge of the circuit court and in no
42 event shall a delay exceed the next succeeding judicial
43 day, excluding Saturday. The judge or referee shall in-
44 form the child of his right to remain silent, that any
45 statement may be used against him and of his right to
46 counsel, and no interrogation shall be made without the
47 presence of a parent or counsel. If the child or his parent
48 or custodian has not retained counsel, counsel shall be
49 appointed forthwith. The referee or judge shall hear
50 testimony concerning the circumstances for taking the
51 child into custody, probable cause and the possible need
52 for detention in accordance with section two, article five-a
53 of this chapter.

54 If there are shown to be sufficient grounds for the
55 arrest, including probable cause for the offense, the child
56 shall be released on recognizance to his parent or cus-
57 todian, except that bail may be required when: (1) There
58 is reasonable cause to believe that the child will be
59 unavailable for court proceedings if the child is not de-
60 tained; or (2) there is reasonable cause to believe that
61 the child will, if not detained, commit an offense in-
62 volving serious injury to any person. The findings and
63 order shall be made in accordance with section three,
64 article five-a of this chapter. If sufficient grounds for the
65 arrest and probable cause are not shown, the child shall
66 be released.

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

1 (a) Following the filing of a juvenile petition, the
2 circuit court or referee shall hold a preliminary hearing.
3 In the event that the child is in custody, such hearing shall
4 be in addition to the immediate detention hearing required
5 by section eight of this article and shall be held within
6 seven days of the time the child is taken into custody

7 unless good cause be shown for a continuance; and if no
8 preliminary hearing is held within seven days of the time
9 the child is taken into custody, the child shall be released
10 on recognizance unless the hearing has been continued for
11 good cause. If the judge is in another county in the circuit,
12 the hearing may be conducted in such other county. The
13 preliminary hearing may be waived by the child, upon
14 advice of his counsel. At the hearing, the court or referee
15 shall:

16 (1) Inform the child and his parents or custodians or
17 any other person standing in loco parentis to him of the
18 child's right to be represented at all stages of proceedings
19 under this article and the right to have counsel appointed
20 if neither the child nor any other of the aforementioned
21 persons can pay for the services of counsel.

22 (2) Appoint counsel by order entered of record, if
23 counsel has not already been retained or appointed.

24 (3) Determine after hearing if there is probable cause
25 to believe that the child is a delinquent child. If probable
26 cause is not found, the child shall be released and the
27 proceedings dismissed. If probable cause is found, the time
28 for the adjudicatory hearing shall be set. The date for the
29 adjudicatory hearing shall be set to give the child, the
30 child's parents and attorney at least ten days' notice, un-
31 less notice is waived by all parties.

32 (4) In the case of a child over the age of sixteen years
33 charged with an offense which if committed by an adult
34 would be a felony, conduct a hearing and make a
35 decision or recommendation whether to transfer the
36 proceeding to a criminal proceeding in accordance with
37 the provisions of section ten of this article. No inquiry
38 relative to admission or denial of allegations or jury
39 demand shall be made by the court or referee until after
40 the determination of whether to transfer the case to a
41 criminal proceeding. The determination by a court or
42 referee that the circumstances do not warrant transfer
43 may not be revoked at a later time.

44 (5) If the child is in custody, review the earlier deci-
45 sion on custody and the amount of bail, if any. In lieu of
46 placing the child in a detention facility, the court may

47 place the child in the temporary custody of the state
48 department pursuant to section sixteen, article two of this
49 chapter or may place the child in the custody of a proba-
50 tion officer. If the child is detained in custody, the deten-
51 tion shall not continue longer than thirty days without
52 commencement of the adjudicatory hearing.

53 (6) Inform the child of the right to demand a jury trial.

54 (b) The child may move to be allowed an improve-
55 ment period for a period not to exceed one year. If the
56 court is satisfied that the best interest of the child is
57 likely to be served by an improvement period, the court
58 may delay the adjudicatory hearing and allow a noncus-
59 todial improvement period upon terms calculated to serve
60 the rehabilitative needs of the child. At the conclusion of
61 the improvement period, the court shall dismiss the pro-
62 ceeding if the terms have been fulfilled; otherwise, the
63 court shall proceed to the adjudicatory stage. A motion
64 for an improvement period shall not be construed as an
65 admission or be used as evidence.

§49-5-10. Transfer of jurisdiction.

1 (a) Upon motion of the prosecuting attorney, the
2 recommendation of the referee or upon its own motion,
3 the court may at the time specified in section nine of this
4 article transfer to a criminal proceeding the case of a child
5 who is alleged to have committed, on or after his sixteenth
6 birthday, an offense which, if committed by an adult, would
7 be a felony if there is clear and convincing proof that: (1)
8 The offense allegedly committed by the child is one of vio-
9 lence or evidences conduct which constitutes a substantial
10 danger to the public; and (2) there are no reasonable pros-
11 pects for rehabilitating the child through resources avail-
12 able to the court under this article. With reference to such
13 rehabilitation prospects the court shall consider the child's
14 mental and physical condition, maturity, emotional atti-
15 tude, home or family environment, school experience and
16 the like. The burden of proof of such determination shall
17 rest on the petitioner.

18 Such motion shall state the grounds for seeking the
19 transfer from a juvenile proceeding to a criminal pro-

ceeding and the consequences of such transfer and shall be served upon the child, his parents or custodians and the child's counsel not less than seventy-two hours before the preliminary hearing. If the child's counsel is appointed at the preliminary hearing, the court or referee shall continue the hearing for at least five days to allow counsel to prepare for the transfer hearing unless counsel indicates that he is prepared to proceed. Testimony of a child at a transfer hearing shall not be admissible in a criminal proceeding or at the adjudicatory hearing under this article.

(b) Counsel for the child cannot waive the hearing on transfer on behalf of the child. Failure to object to the transfer shall not constitute a waiver.

(c) If the court transfers the case to a criminal proceeding, the court's findings of fact and conclusions of law shall be incorporated within the order. The child shall have the right to appeal to the supreme court of appeals from this order.

§49-5-11. Adjudication.

At the outset of an adjudicatory hearing, the court shall inquire of the child whether he wishes to admit or deny the allegations in the petition.

(a) If the respondent child admits the allegations of the petition, the court shall consider the admission to be proof of the allegations if the court finds (1) the respondent fully understands all his rights under this article, (2) the respondent voluntarily, intelligently and knowingly admits all facts requisite for an adjudication and (3) the respondent in his admission has not set forth facts which constitute a defense to the allegations. A plea of admission shall not be construed as a waiver of a defective petition or defective notice.

(b) If the respondent child denies the allegations, the court shall dispose of all pretrial motions and the court or jury shall proceed to hear evidence.

(c) If the allegations in the petition are admitted or are sustained by proof beyond a reasonable doubt, the court shall schedule the matter for disposition; otherwise

20 the petition shall be dismissed and the child discharged
21 from custody. Findings of fact and conclusions of law
22 addressed to all allegations in the petition shall be in-
23 corporated into the order of the court.

§49-5-13. Disposition; appeal.

1 (a) In aid of disposition, the juvenile probation officer
2 or state department worker assigned to the court shall,
3 upon request of the court, make an investigation of the
4 environment of the child and the alternative dispositions
5 possible. The court, upon its own motion, or upon request
6 of counsel, may order a psychological examination of the
7 child. The report of such examination and other investi-
8 gative and social reports shall not be made available to the
9 court until the dispositional stage. Unless waived, copies
10 of the report shall be provided to counsel for the peti-
11 tioner and the child no later than seventy-two hours prior
12 to the dispositional hearing.

13 (b) Following the adjudication, the court shall con-
14 duct the dispositional proceeding, giving both the peti-
15 tioner and the child an opportunity to be heard. In
16 disposition the court shall not be limited to the relief
17 sought in the petition and shall give precedence to the
18 least restrictive of the following alternatives consistent
19 with the child's best interests:

20 (1) Dismiss the petition;

21 (2) Refer the child and the child's parent or custodian
22 to a community agency for needed assistance and dismiss
23 the petition;

24 (3) Upon a finding that the child is in need of extra-
25 parental supervision (a) place the child under the su-
26 pervision of a probation officer or other person while
27 leaving the child in custody of his parent or custodian and
28 (b) prescribe a program of treatment or therapy or limit
29 the child's activities under terms which are reasonable
30 and within the child's ability to perform;

31 (4) Upon a finding that a parent or custodian is not
32 willing or able to take custody of the child, that a child
33 is not willing to reside in the custody of his parent or
34 custodian, or that a parent or custodian cannot provide the

35 necessary supervision and care of the child, the court may
 36 place the child in temporary foster care or temporarily
 37 commit the child to the state department or a child wel-
 38 fare agency. In the event the court treats the child as a
 39 neglected child, the provisions of article six of this chap-
 40 ter shall apply;

41 (5) Upon a finding that no less restrictive alternative
 42 would accomplish the requisite rehabilitation of the child,
 43 and upon an adjudication of delinquency pursuant to
 44 subsection (1), section four, article one of this chapter,
 45 commit the child to an industrial home or correctional
 46 institution for children. All such commitments shall be
 47 for an indeterminate period not to exceed the maximum
 48 term for which an adult could have been sentenced for the
 49 same offense, with discretion as to discharge to rest with
 50 the director of the institution, who may release the child,
 51 or return him to the court for further disposition;

52 (6) After a hearing conducted under the procedures
 53 set out in subsections (c) and (d) of section four, article
 54 five, chapter twenty-seven of the code, commit the child
 55 to a mental health facility. Discretion as to discharge in
 56 such a case will rest with the clinical director of the
 57 mental health facility in accordance with the child's
 58 treatment plan; the director may release a child or
 59 return him to the court for further disposition.

60 (c) The disposition of the child shall not be affected
 61 by the fact that the child demanded a trial by jury or
 62 made a plea of denial. Any dispositional order is subject
 63 to appeal to the supreme court of appeals.

64 (d) Following disposition, it shall be inquired of the
 65 respondent whether or not appeal is desired and the
 66 response transcribed; a negative response shall not be
 67 construed as a waiver. The evidence shall be transcribed
 68 as soon as practicable and made available to the child
 69 or his counsel, if the same is requested for purposes of
 70 further proceedings. A judge may grant a stay of execu-
 71 tion pending further proceedings.

§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
3 department official or prosecuting attorney;

4 (2) Upon the request of the child or a child's parent
5 or custodian who alleges a change of circumstances re-
6 lating to disposition of the child.

7 Upon such a motion or request, the court shall conduct
8 a review proceeding, except that if the last dispositional
9 order was within the previous six months the court may
10 deny a request for review. Notice in writing of a review
11 proceeding shall be given to the child, the child's parent
12 or custodian and all counsel not less than seventy-two
13 hours prior to the proceeding. The court shall review the
14 performance of the child, the child's parent or custodian,
15 the child's social worker and other persons providing as-
16 sistance to the child or child's family. If the motion or
17 request for review of disposition is based upon an alleged
18 violation of a court order, the court may, within one year
19 after the entry of the initial dispositional order, modify
20 the dispositional order to a more restrictive alternative if
21 it finds clear and convincing proof of substantial violation.
22 Otherwise, the dispositional order may be modified only
23 to one of the less restrictive alternatives set forth in
24 section thirteen of this article. A proceeding to modify a
25 dispositional order may not be used in circumvention of
26 a full delinquency proceeding based upon new circum-
27 stances or a new violation of a law or ordinance. No child
28 shall be required to seek a modification order as provided
29 in this section in order to exercise his right to seek re-
30 lease by habeas corpus.

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

1 (a) The commissioner of the state department shall,
2 with the approval of the court, designate an employee
3 of the state department to act as a juvenile probation
4 officer, and when required one or more employees of
5 the state department to act as assistant to such pro-
6 bation officer, and such employee or employees, when
7 so assigned, shall perform their duties under the sole
8 supervision and control of the court. There shall be at
9 least one such juvenile probation officer assigned to each

10 county, but a juvenile probation officer may be assigned
11 to more than one county.

12 The foregoing provisions of this section shall not be
13 construed as abrogating or affecting in any way the
14 power and authority vested in any court, subject to the
15 approval of and in accordance with the rules of the su-
16 preme court of appeals, to select, supervise and discharge
17 its own probation officers and assistants thereto.

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

23 (1) Make investigation of the case;

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

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

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

**§49-5-16. Committing children to jail and detention facilities;
standards.**

1 (a) A child under eighteen years of age shall not be
2 committed to a jail or police station, except that any
3 child over fourteen years of age who has been committed
4 to an industrial home or correctional institution may be
5 held in the juvenile department of a jail while awaiting
6 transportation to the institution for a period not to exceed
7 ninety-six hours, and a child over sixteen years of age
8 who is charged with a crime which would be a violent
9 felony if committed by an adult, may, upon an order of
10 the circuit court, be housed in a juvenile detention por-
11 tion of a county facility, but not within sight of adult
12 prisoners. A child charged with or found to be delinquent
13 under subdivision (3) or (4), section four, article one
14 of this chapter, shall not be housed in a detention or
15 other facility wherein persons are detained for criminal
16 offenses or for delinquency involving offenses which
17 would be crimes if committed by an adult.

18 (b) The supreme court of appeals shall prescribe
19 written policies and procedures governing the operation
20 of all correctional, detention and other facilities wherein
21 juveniles may be housed. Said policies and procedures
22 shall include, but shall not be limited to, standards of
23 cleanliness, temperature and lighting; availability of
24 medical and dental care; provision of food, furnishings,
25 clothing and toilet articles; supervision; procedures for
26 enforcing rules of conduct consistent with due process
27 of law, and visitation privileges. On and after January
28 one, one thousand nine hundred seventy-nine, a child
29 in custody or detention shall have, at a minimum, the
30 following rights, and the policies prescribed shall insure
31 that:

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

35 (2) A child shall have the opportunity to participate
36 in physical exercise each day;

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

40 (4) A child shall be provided his own clothing or in-
41 dividualized clothing which is clean, supplied by the
42 facility, and daily access to showers;

43 (5) A child shall have constant access to writing ma-
44 terials and may send mail without limitation, censorship
45 or prior reading, and may receive mail without prior
46 reading, except that mail may be opened in the child's
47 presence, without being read, to inspect for contraband;

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

52 (7) A child shall have immediate access to medical
53 care as needed;

54 (8) A child in a juvenile detention facility or state
55 institution shall be provided access to education includ-
56 ing teaching, educational materials and books;

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

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

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

65 (c) The supreme court of appeals shall appoint and
66 maintain a five-member panel, consisting of five attorneys
67 who are willing to serve in such capacity, to visit, inspect
68 and interview residents of all juvenile institutions, de-
69 tention facilities and places in the state wherein juveniles
70 may be held involuntarily, to make public reports of such
71 reviews, and to perform such other duties as shall be
72 prescribed by the court. The members so appointed shall
73 serve without compensation for their time.

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

1 (a) On the Monday following the first Tuesday of every
2 year, the court shall orally direct the expungement of all
3 law-enforcement files and records, including fingerprints,
4 court files and records of government and private
5 agencies regarding every person having juvenile records
6 in the court with regard to whom juvenile jurisdiction has
7 terminated. As used in this section, "expungement" means
8 the physical destruction of files and records.

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

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

23 (d) After the child's eighteenth birthday or after ter-
24 mination of juvenile jurisdiction, whichever is later, a
25 proceeding conducted under this chapter shall be deemed
26 never to have occurred. The child, the child's parent or
27 custodian, the court, law-enforcement agencies and other
28 governmental and private agencies, in response to a re-
29 quest for record information shall reply that a law-en-
30 forcement record, court record or record of proceedings or
31 arrests with respect thereto does not exist.

32 (e) No individual, firm, corporation or other entity
33 shall, on account of a person's prior involvement in a pro-
34 ceeding under this article, discriminate against any person
35 in access to, terms of, or conditions of employment, hous-
36 ing, education, credit, contractual 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
2 law is taken into the custody of any officer or employee
3 of the state or any political subdivision thereof shall be
4 forthwith afforded a hearing to ascertain if such child
5 shall be further detained. In connection with any such
6 hearing, the provisions of article five of this chapter shall
7 apply. It shall be the duty of the judge or referee to
8 avoid incarceration of such child in any jail. Unless the
9 circumstances of the case otherwise require, taking into
10 account the welfare of the child as well as the interest
11 of society, such child shall be released forthwith into
12 the custody of his parent or parents, relative, custodian
13 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 circuit court in the county in which the

5 child resides, or to the judge of such court in vacation.
6 The petition shall be verified by the oath of some credible
7 person having knowledge of the facts. The peti-
8 tion shall allege specific conduct including time and place,
9 how such conduct comes within the statutory definition
10 of neglect or abuse with references thereto, any supportive
11 services provided by the state department to remedy the
12 alleged circumstances and the relief sought. Upon filing
13 of the petition, the court shall set a time and place for a
14 hearing and may appoint counsel. When there is an order
15 for temporary custody pursuant to section three of this
16 article, such hearing shall be held within thirty days of
17 such order, unless a continuance for a reasonable time is
18 granted to a date certain, for good cause shown.

19 (b) The petition and notice of the hearing shall be
20 served upon both parents and any other custodian, giving
21 to such parents or custodian at least ten days' notice, and
22 notice shall be given to the state department. In cases
23 wherein personal service within West Virginia cannot be
24 obtained after due diligence upon any parent or other
25 custodian, a copy of the petition and notice of the hearing
26 shall be mailed to such person by certified mail, addressee
27 only, return receipt requested, to the last known address
28 of such person. If said person signs the certificate, service
29 shall be complete and said certificate shall be filed as
30 proof of said service with the clerk of the circuit court.
31 If service cannot be obtained by personal service or by
32 certified mail, notice shall be by publication as a Class II
33 legal advertisement in compliance with the provisions of
34 article three, chapter fifty-nine of this code. A notice of
35 hearing shall specify the time and place of the hearing,
36 the right to counsel of the child and parents or other
37 custodians at every stage of the proceedings and the fact
38 that such proceedings can result in the permanent termi-
39 nation of the parental rights. Failure to object to defects
40 in the petition and notice shall not be construed as a
41 waiver.

42 (c) At the time of the institution of any proceeding
43 under this article, the state department shall provide
44 supportive services in an effort to remedy circumstances
45 detrimental to a child.

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

1 (a) In any proceeding under the provisions of this
2 article, the child, his parents, his custodian or other
3 persons standing in loco parentis to him, such persons
4 other than the child being hereinafter referred to as
5 other party or parties, shall have the right to be repre-
6 sented by counsel at every stage of the proceedings and
7 shall be informed by the court of their right to be so
8 represented and that if they cannot pay for the services
9 of counsel, that counsel will be appointed. If the child
10 or other parties have not retained counsel and the child
11 and other parties cannot pay for the services of counsel,
12 the court shall, by order entered of record, at least ten
13 days prior to the date set for hearing, appoint an attorney
14 or attorneys to represent the child and other party or
15 parties and so inform the parties. Under no circumstances
16 may the same attorney represent both the child and the
17 other party or parties; however, if more than one child
18 from a family is involved in the proceeding, one attorney
19 may represent all the children. The court may allow to
20 each attorney so appointed a fee in the same
21 amount which appointed counsel can receive in
22 felony cases.

23 (b) In any proceeding under this article, the parents or
24 custodians may, prior to final hearing, move to be allowed
25 an improvement period of three to twelve months in
26 order to remedy the circumstances or alleged circum-
27 stances upon which the proceeding is based. The court
28 shall allow such an improvement period unless it finds
29 compelling circumstances to justify a denial thereof, but
30 may require temporary custody in the state department
31 or another agency during the improvement period.

32 (c) In any proceeding under this article, the party
33 or parties having custody of the child shall be afforded
34 a 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 unless waived by all parties to the proceeding. The
39 rules of evidence shall apply. Where relevant, the court

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J. W. J.

40 shall consider the efforts of the state department to rem-
 41 edy the alleged circumstances. At the conclusion of the
 42 hearing the court shall make a determination based upon
 43 the evidence and shall make findings of fact and conclu-
 44 sions of law as to whether such child is abused or
 45 neglected, which shall be incorporated into the order of
 46 the court. The findings must be based upon conditions
 47 existing at the time of the filing of the petition and at
 48 the time of the hearing and proven by clear and convincing
 49 proof.

50 (d) Following the court's determination, it shall be
 51 inquired of the parents or custodians whether or not
 52 appeal is desired and the response transcribed. A negative
 53 response shall not be construed as a waiver. The evidence
 54 shall be transcribed and made available to the parties or
 55 their counsel as soon as practicable, if the same is re-
 56 quired for purposes of further proceedings. If an indigent
 57 person intends to pursue further proceedings, the court
 58 reporter shall furnish a transcript of the hearing without
 59 cost to the indigent person, if an affidavit is filed stating
 60 that he cannot pay therefor.

§49-6-3. Same—Temporary custody.

1 (a) Upon the filing of a petition, the court may order
 2 that the child be delivered for not more than ten days
 3 into the custody of the state department or a responsible
 4 relative, pending a preliminary hearing, if it finds that:
 5 (1) There exists imminent danger to the physical well-
 6 being of the child, and (2) there are no reasonably avail-
 7 able alternatives to removal of the child, including, but
 8 not limited to, the provision of medical, psychiatric, psy-
 9 chological or homemaking services in the child's present
 10 custody. The initial order directing such custody shall
 11 contain an order appointing counsel and scheduling the
 12 preliminary hearing, and upon its service shall require
 13 the immediate transfer of custody of such child to the
 14 state department or a responsible relative.

15 (b) Whether or not the court orders immediate trans-
 16 fer of custody as provided in subsection (a) of this sec-
 17 tion, if the facts alleged in the petition demonstrate to
 18 the court that there exists imminent danger to the child,

19 the court may schedule a preliminary hearing giving the
20 respondents at least five days' actual notice. If the court
21 finds at the preliminary hearing that there are no alter-
22 natives less drastic than removal of the child and that a
23 hearing on the petition cannot be scheduled in the interim
24 period, the court may order that the child be delivered
25 into the temporary custody of the state department or
26 an appropriate person or agency for a period not exceeding
27 thirty days: *Provided*, That if the court grants an improve-
28 ment period as provided in subsection (b), section two
29 of this article, the thirty-day limit upon temporary
30 custody may be waived.

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

1 At any time during proceedings under this article the
2 court may, upon its own motion or upon motion of the
3 child or other parties, order the child or other parties
4 to be examined by a physician, psychologist or psychia-
5 trist, and may require testimony from such medical
6 expert, subject to cross-examination and the rules of
7 evidence: *Provided*, That the court shall not terminate
8 parental or custodial rights of a party solely because
9 the party refuses to submit to the examination, nor
10 shall the court hold such party in contempt for refusing
11 to submit to an examination. The physician, psychologist
12 or psychiatrist shall be allowed to testify as to the con-
13 clusions reached from hospital, medical, psychological or
14 laboratory records provided the same are produced at
15 the hearing. The court by order shall provide for the
16 payment of all such expert witnesses. If the child, parent
17 or custodian is indigent, such witnesses shall be com-
18 pensated out of the treasury of the state, upon certificate
19 of the court wherein the case is pending. No evidence
20 acquired as a result of any such examination of the parent
21 or any other person having custody of the child may
22 be used against such person in any subsequent criminal
23 proceedings against such person.

§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 de-

3 partment information about the history, physical condi-
4 tion and present situation of the child. The court shall
5 forthwith proceed to disposition giving both the petitioner
6 and respondents an opportunity to be heard. The court
7 shall give precedence to dispositions in the following
8 sequence:

9 (1) Dismiss the petition;

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

13 (3) Return the child to his own home under super-
14 vision of the state department;

15 (4) Order terms of supervision calculated to assist
16 the child and the child's parent or custodian which pre-
17 scribe the manner of supervision and care of the child
18 and which are within the ability of the parent or custo-
19 dian to perform;

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

26 (6) Upon a finding that there is no reasonable likeli-
27 hood that the conditions of neglect or abuse can be sub-
28 stantially corrected in the near future, and when neces-
29 sary for the welfare of the child, terminate the parental
30 or custodial rights and responsibilities and commit the
31 child to the permanent guardianship of the state depart-
32 ment or a licensed child welfare agency. Notwithstanding
33 any other provisions of this article, the permanent paren-
34 tal rights shall not be terminated if a child fourteen years
35 of age or older or otherwise of an age of discretion as
36 determined by the court, objects to such termination. No
37 adoption of a child shall take place until all proceedings
38 for termination of parental rights under this article and
39 appeals thereof are final.

40 (b) As used in this section, "no reasonable likeli-
41 hood that conditions of neglect or abuse can be sub-

42 stantially corrected" shall mean that: (1) The parent
43 or parents have habitually abused or are addicted to in-
44 toxicating liquors, narcotics or other dangerous drugs
45 to the extent that proper parenting ability has been
46 seriously impaired and the parent has not responded to
47 or followed through with recommended and appropriate
48 treatment which could have improved the capacity for
49 adequate parental functioning; (2) the parent or parents
50 have willfully refused or are presently unwilling to co-
51 operate in the development of a reasonable foster care
52 plan designed to lead to the child's return to the parent
53 or parents; (3) the parent or parents have not responded
54 to or followed through with reasonable rehabilitative
55 efforts of social, medical, mental health or other rehabili-
56 tative agencies designed to reduce or prevent the neglect
57 or abuse of the child, as evidenced by the continuation
58 of substantial or repeated acts of neglect or abuse after
59 the provision of such services; (4) the parent or parents
60 have abandoned the child; or (5) the parent or parents
61 have repeatedly or seriously physically abused the child.

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

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

1 Upon motion of a child, a child's parent or custodian
2 or the state department alleging a change of circumstances
3 requiring a different disposition, the court shall conduct
4 a hearing pursuant to section two of this article and may
5 modify a dispositional order: *Provided*, That a disposi-
6 tional order pursuant to subdivision (6), subsection (a)

7 of section five shall not be modified after the child has
8 been adopted. Adequate and timely notice of any motion
9 for modification shall be given to the child's counsel, coun-
10 sel for the child's parent or custodian and to the state
11 department.

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

1 An agreement of a natural parent in termination of
2 parental rights shall be valid if made by a duly acknowl-
3 edged writing, and entered into under circumstances
4 free from duress and fraud.

§49-6-8. Foster care review; annual reports to the court.

1 (a) If, twenty months after receipt of physical or
2 legal custody of a child, the state department has not placed
3 a child in permanent foster care or an adoptive home or
4 placed the child with a natural parent, the state depart-
5 ment shall file with the court a petition stating the child's
6 situation, the efforts that have been made to place the
7 child in a permanent situation, the present foster care
8 arrangements and the plan for pursuing permanent ar-
9 rangements. "Permanent foster care" shall mean a writ-
10 ten arrangement with an adult or adults following a six-
11 month trial period whereby the state department places
12 the care, custody and control of a child until the child's
13 emancipation with such adult or adults. The court may
14 schedule a hearing in chambers, giving notice and the
15 right to be present to: The child, if twelve years of age
16 or older; the child's parents; the child's foster parents; and
17 such other persons as the court may in its discretion
18 direct. At the conclusion of the proceeding the court shall
19 in accordance with the best interests of the child enter
20 an appropriate order of disposition. The court shall
21 possess continuing jurisdiction over cases reviewed under
22 this section for so long as a child remains in temporary
23 foster care or, when a child is returned to his natural
24 parents subject to conditions imposed by the court, for
25 so long as the conditions are effective. If the child
26 remains in the physical or legal custody of the state
27 department, the state department shall file a supple-
28 mentary petition with the court within eighteen months
29 and every eighteen months thereafter until the child is

30 placed in an adoptive home or permanent foster care or
31 returned to his parents.

32 (b) The state department shall annually report to the
33 court the current status of the placements of children in
34 permanent care and custody of the state department who
35 have not been adopted.

**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 and
7 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 and
neglect.**

1 When any medical, dental or mental health professional,
2 christian science practitioner, religious healer, school-
3 teacher or other school personnel, social service worker,
4 child care or foster care worker, peace officer or law-
5 enforcement official has reasonable cause to suspect that
6 a child is neglected or abused or observes the child being
7 subjected to conditions that are likely to result in abuse
8 or neglect, such person shall immediately report the cir-
9 cumstances or cause a report to be made to the state
10 department child protective service: *Provided*, That any
11 person required to report under this article who is a
12 member of the staff of a public or private institution,
13 school, facility or agency shall immediately notify the
14 person in charge of such institution, school, facility or
15 agency or a designated agent thereof, who shall report or
16 cause a report to be made. However, nothing in this
17 article is intended to prevent individuals from reporting
18 on their own behalf.

19 In addition to those persons and officials specifically
20 required to report situations involving suspected abuse or

21 neglect of children, any other person may make a report
22 if such person has reasonable cause to suspect that a child
23 has been abused or neglected in a home or institution or
24 observes the child being subjected to conditions or cir-
25 cumstances that would reasonably result in abuse or ne-
26 glect.

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

1 Any person or official who is required under section one
2 of this article to report cases of suspected child abuse or
3 neglect and who has reasonable cause to suspect that a
4 child has died as a result of child abuse or neglect, shall
5 report that fact to the appropriate medical examiner or
6 coroner. Upon the receipt of such a report, the medical
7 examiner or coroner shall cause an investigation to be
8 made and report his findings to the police, the appropriate
9 prosecuting attorney, the local child protective service
10 agency and, if the institution making a report is a hospital,
11 to the hospital.

§49-6A-4. 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, photographs of the areas of
4 trauma visible on a child and, if medically indicated,
5 cause to be performed radiological examinations of the
6 child. Any photographs or x-rays taken shall be sent to
7 the appropriate child protective service as soon as pos-
8 sible.

§49-6A-5. Reporting procedures.

1 Reports of child neglect or abuse pursuant to this
2 article shall be made immediately by telephone to the
3 local state department child protective service agency
4 and shall be followed by a written report within forty-
5 eight hours if so requested by the receiving agency. The
6 state department may establish and maintain a twenty-
7 four hour, seven-day-a-week toll-free telephone number
8 to receive such calls reporting suspected or known child
9 abuse or neglect.

10 A copy of any report of serious injury shall be
11 made available immediately to the appropriate law-en-
12 forcement agency, the prosecuting attorney or the coroner
13 or medical examiner's office. All reports under this article
14 shall be confidential, and unless there are pending pro-
15 ceedings with regard thereto, shall be destroyed two years
16 following their preparation. Reports of known or sus-
17 pected institutional child abuse or neglect shall be made
18 and received as all other reports made pursuant to this
19 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 reason of such actions.

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

1 The privileged quality of communications between
2 husband and wife and between any professional person
3 and his patient or his client, except that between attorney
4 and client, is hereby abrogated in situations involving
5 suspected or known child abuse or neglect.

§49-6A-8. Failure to report; penalty.

1 Any person, official or institution required by this article
2 to report a case involving a child known or suspected to
3 be abused or neglected, who knowingly fails to do so or
4 knowingly prevents another person acting reasonably
5 from doing so, shall be guilty of a misdemeanor, and,
6 upon conviction thereof, shall be confined in the county
7 jail not more than ten days or fined not more than one
8 hundred dollars, or both.

§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 agency

7 responsible for receiving, investigating or arranging for
8 investigation and coordinating the investigation of all
9 reports of child abuse or neglect. In accordance with the
10 local plan for child protective services, it shall provide
11 protective services to prevent further abuse or neglect
12 of children and provide for or arrange for and coordinate
13 and monitor the provision of those services necessary to
14 insure the safety of children. The local child protective
15 service shall be organized to maximize the continuity
16 of responsibility, care and service of individual workers
17 for individual children and families.

18 Each local child protective service shall:

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

22 (2) Provide or arrange for emergency children's ser-
23 vices to be available at all times; and

24 (3) Within twenty-four hours of notification of sus-
25 pected child abuse or neglect, commence or cause to be
26 commenced a thorough investigation of the report and
27 the child's environment.

28 In those cases in which the local child protective service
29 determines that the best interests of the child require
30 court action, the local child protective service shall initi-
31 ate the appropriate legal proceeding.

32 The local child protective service shall be responsible
33 for providing, directing or coordinating the appropriate
34 and timely delivery of services to any child suspected
35 or known to be abused or neglected, including services
36 to the child's family and those responsible for the child's
37 care.

38 To carry out the purposes of this article, all depart-
39 ments, boards, bureaus and other agencies of the state
40 or any of its political subdivisions and all agencies pro-
41 viding services under the local child protective service
42 plan, shall, upon request, provide to the local child pro-
43 tective service such assistance and information as will
44 enable it to fulfill its responsibilities.

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§49-6A-10. Education and training.

1 Within available funding and as appropriate, the state
2 department shall conduct educational programs with the
3 staff of the state department, persons required to report,
4 and the general public in order to encourage maximum
5 reporting of child abuse and neglect, and to improve
6 communication, cooperation and coordination among all
7 agencies involved in the identification, prevention and
8 treatment of the abuse and neglect of children.

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 concerning a child as defined in this chapter shall
4 be kept confidential and shall not be released: *Provided*,
5 That such records, except adoption records and records
6 disclosing the identity of a complainant of child abuse or
7 neglect, shall be made available (1) where authorized
8 by this chapter; (2) to the child, parent, or the attorney
9 of the child or parent, whether or not in connection with
10 judicial proceedings; (3) with the written consent of the
11 child or of someone authorized to act in the child's behalf;
12 (or (4) pursuant to subpoena or order of a court of record;
13 *Provided, however*, That a subpoena for such records
14 may be quashed if the court determines that disclosure
15 is not for a bona fide purpose and compromises the con-
16 fidentiality intended by this section. The official court
17 file pertaining to the person who is the subject of a
18 neglect, abuse or delinquency proceeding shall be open
19 for inspection only to the child, the child's parent or cus-
20 todian, their counsel and other parties to the proceedings
21 before the court: *Provided further*, That the court may,
22 by order, open juvenile court files to inspection by mem-
23 bers of the news media or persons doing research, on the
24 condition that information which would identify the child
25 or family involved in the proceeding shall not be divulged.
26 Otherwise, no records shall be released. No record or
27 information shall be transmitted to any federal or state
28 agency except as specifically provided herein.

212
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29 Except in juvenile proceedings which are transferred
30 to criminal proceedings, law-enforcement records and
31 files concerning a child shall be kept separate from the
32 records and files of adults and not included within the
33 court files. Law-enforcement records and files concerning
34 a child shall be open to inspection by the prosecutor,
35 probation officer, state department, the child, the child's
36 parent or custodian, the child's counsel and to other law-
37 enforcement agencies when the information is relevant
38 to a specific investigation regarding that child by that
39 agency.

40 Any person who violates this section shall be liable for
41 damages in the amount of three hundred dollars or actual
42 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
6 the guardian, institution, organization or person having
7 custody of such child, out of such wages, salary or com-
8 mission, and that he shall execute an assignment thereof
9 pro tanto. The court or judge may also order the person
10 to report to the court or judge, from time to time, his
11 place of employment and the amount earned by him.
12 Upon his failure to obey the order of the court or judge,
13 after proper notice and hearing, he may be punished
14 as for contempt of court.

§49-7-27. Emancipation.

1 A child over the age of sixteen may petition a court
2 to be declared emancipated. The parents or custodians
3 shall be made respondents and, in addition to personal
4 service thereon, there shall be publication as a Class II
5 legal advertisement in compliance with the provisions of
6 article three, chapter fifty-nine of this code. Upon a
7 showing that such child can provide for his physical and
8 financial well-being and has the ability to make decisions
9 for himself, the court may for good cause shown declare

10 the child emancipated. The child shall thereafter have
11 full capacity to contract in his own right and the parents
12 or custodians shall have no right to the custody and con-
13 trol of such child or duty to provide the child with care
14 and financial support. A child over the age of sixteen
15 years who marries shall be emancipated by operation of
16 law. An emancipated child shall have all of the privileges,
17 rights and duties of an adult, including the right of con-
18 tract, except that such child shall remain a child as de-
19 fined for the purposes of articles five and five-a of this
20 chapter.

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

James L. Davis
Chairman, Senate Committee

Clarence L. Christian Jr.
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Joe Willoughby
Clerk of the Senate

CA Blankenship
Clerk of the House of Delegates

W. T. Bratherton Jr.
President of the Senate

Donald L. Hogg
Speaker House of Delegates

The within is approved this the 13
day of April, 1977.

Robert R. Ralston
Governor



APPROVED AND SIGNED BY THE GOVERNOR

RECEIVED
APR 7 5 02 PM '77
OFFICE OF THE GOVERNOR

Date April 13, 1977
Time 4:30 p.m.

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SECY. OF STATE