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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984

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ENROLLED

SENATE BILL NO. 85

(By Mr. BETHNER)

—•—
PASSED MARCH 10, 1984

In Effect NINETY days from Passage



ENROLLED
Senate Bill No. 85

(BY MR. BOETTNER)

[Passed March 10, 1984; in effect ninety days from passage.]

AN ACT to amend and reenact section three, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, four, five, and eight, article six of said chapter forty-nine; to further amend said article six by adding thereto a new section, designated section ten; to amend and reenact sections five and eight, article six-a of said chapter forty-nine; to further amend said chapter forty-nine by adding thereto two new articles, designated article six-c and article six-d, relating to child abuse and neglect generally; defining certain terms; providing for the representation of parties in abuse and neglect proceedings; allowing a pre-adjudication improvement period; describing the rights of parties during hearing; requiring abuse and neglect proceeding to be given priority on court docket; providing for transcript on appeal; describing the procedure for transferring temporary custody of a child alleged to be abused or neglected; authorizing the temporary removal of children not alleged to be abused or neglected under certain circumstances; providing for preliminary hearing and discretionary improvement period; authorizing child protection service worker to take custody of child or children without court order, under certain circumstances; establishing a procedure for medical and mental examinations during proceedings; authorizing persons to apply for an order of custody for medical examination prior

to the filing of a petition to obtain evidence of abuse or neglect; describing the dispositions available to the court upon a finding of abuse or neglect; setting forth conditions under which a court shall determine that there is no reasonable likelihood that conditions of abuse or neglect can be substantially corrected; empowering the court to grant an improvement period as an alternative disposition; providing for foster care review by courts and the annual reporting to the court as to placements of children; describing the duties of the prosecuting attorney in cases of child abuse and neglect and requiring an annual report to the grand jury regarding the discharge of such duties; providing reporting procedures for cases of child abuse and neglect and requiring the department of human services to forward reports of serious injury to law-enforcement agencies, prosecuting attorneys or the coroner or the medical examiner; defining the misdemeanor offense of failure to report cases of abuse or failure to forward reports of serious injury and establishing a penalty therefor; creating a children's trust fund for child abuse and neglect prevention; setting forth legislative findings and intent; defining certain terms; establishing the children's trust fund and providing for the deposit of money received by the fund with the state treasurer; authorizing the commissioner of the department of human services to transmit requisitions to the auditor upon a majority vote of the members appointed and then serving on the commission on children and youth; describing the purposes for which funds may be used; providing a procedure for taxpayers to contribute a portion of any refund from their personal income tax; describing the duties of the commission on children and youth in relation to the children's trust fund and the additional responsibilities of the commission; providing for the commission on children and youth making recommendations to the governor and the Legislature; creating the West Virginia child protective services act; setting forth purpose and intent; requiring the department of human services to develop a family case plan for families placed upon an improvement period or referred to the department following an adjudication and finding of abuse and neglect; describing the contents of a family case plan and an expanded workers' case plan; and requiring the commissioner of the department of human services within

the limits of available funds to establish certain programs and services.

Be it enacted by the Legislature of West Virginia:

That section three, 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 two, three, four, five, and eight, article six of said chapter forty-nine be amended and reenacted; that said article six be further amended by adding thereto a new section, designated section ten; that sections five and eight, article six-a of said chapter forty-nine be amended and reenacted; and that said chapter forty-nine be further amended by adding thereto two new articles, designated article six-c and article six-d, all to read as follows:

ARTICLE 1. PURPOSES; DEFINITIONS.

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

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

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

8 (2) Sexual abuse or sexual exploitation.

9 In addition to its broader meaning, physical injury may
10 include an injury to the child as a result of excessive
11 corporal punishment.

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

17 (c) "Child abuse and neglect" or "child abuse or
18 neglect" means physical injury, substantial mental or
19 emotional injury, sexual abuse, sexual exploitation, or
20 negligent treatment or maltreatment of a child by a parent,
21 guardian, or custodian who is responsible for the child's
22 welfare, under circumstances which harm or threaten the
23 health and welfare of the child;

24 (d) "Child abuse and neglect services" means social
25 services which are directed toward:

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

28 (2) Identifying, preventing and remedying conditions
29 which cause child abuse and neglect;

30 (3) Preventing the unnecessary removal of children
31 from their families by identifying family problems and
32 assisting families in resolving problems which could lead to
33 a removal of children and a breakup of the family;

34 (4) In cases where children have been removed from
35 their families, providing services to the children and the
36 families so as to restore such children to their families;

37 (5) Placing children in suitable adoptive homes when
38 restoring the children to their families is not possible or
39 appropriate; and

40 (6) Assuring the adequate care of children away from
41 their families when the children have been placed in the
42 custody of the department or third parties.

43 (e) "Imminent danger to the physical well-being of the
44 child" means an emergency situation in which the welfare
45 or the life of the child is threatened. Such emergency
46 situation exists when there is reasonable cause to believe
47 that any child in the home is or has been sexually abused or
48 sexually exploited, or reasonable cause to believe that the
49 following conditions threaten the health or life of any child
50 in the home:

51 (1) Nonaccidental trauma inflicted by a parent,
52 guardian, custodian, sibling or a babysitter or other
53 caretaker; or

54 (2) A combination of physical and other signs indicating
55 a pattern of abuse which may be medically diagnosed as
56 battered child syndrome; or

57 (3) Nutritional deprivation; or

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

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

61 (6) Substantial emotional injury inflicted by a parent,
62 guardian or custodian.

63 (f) "Multidisciplinary team" means a group of
64 professionals and paraprofessionals representing a variety
65 of disciplines who interact and coordinate their efforts to
66 identify, diagnose and treat specific cases of child abuse
67 and neglect. Multidisciplinary teams may include, but are

68 not limited to, medical, child care, and law-enforcement
69 personnel, social workers, psychologists and psychiatrists.
70 Their goal is to pool their respective skills in order to
71 formulate accurate diagnoses and to provide
72 comprehensive coordinated treatment with continuity and
73 follow-up for both parents and children. "Community
74 team" means a multidisciplinary group which addresses the
75 general problem of child abuse and neglect in a given
76 community, and may consist of several multidisciplinary
77 teams with different functions;

78 (g) (1) "Neglected child" means a child:

79 (A) Whose physical or mental health is harmed or
80 threatened by a present refusal, failure or inability of the
81 child's parent, guardian or custodian to supply the child
82 with necessary food, clothing, shelter, supervision, medical
83 care or education, when such refusal, failure or inability is
84 not due primarily to a lack of financial means on the part of
85 the parent, guardian or custodian; or

86 (B) Who is presently without necessary food, clothing,
87 shelter, medical care, education or supervision because of
88 the disappearance or absence of the child's parent or
89 custodian.

90 (2) "Neglected child" does not mean a child:

91 (A) Whose parent, guardian or custodian has failed to
92 provide him with medical care because such medical care
93 conflicts with the tenets and practices of a recognized
94 religious denomination or order of which such parent,
95 guardian or custodian is an adherent or member; or

96 (B) Whose education is conducted within the provisions
97 of section one, article eight, chapter eighteen of this code.

98 (h) "Parenting skills" means a parent's competencies in
99 providing physical care, protection, supervision and
100 psychological support appropriate to a child's age and state,
101 development;

102 (i) (1) "Sexual abuse" means:

103 (A) As to a child who is less than sixteen years of age,
104 any of the following acts which a parent, guardian, or
105 custodian shall engage in, attempt to engage in, or
106 knowingly procure another person to engage in, with such
107 child, notwithstanding the fact that the child may have
108 willingly participated in such conduct or the fact that the

109 child may have suffered no apparent physical injury or
110 mental or emotional injury as a result of such conduct:

- 111 (i) Sexual intercourse; or
- 112 (ii) Sexual intrusion; or
- 113 (iii) Sexual contact; or

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

- 122 (i) Sexual intercourse; or
- 123 (ii) Sexual intrusion; or
- 124 (iii) Sexual contact; or

125 (C) Any conduct whereby a parent, guardian or
126 custodian displays his or her sex organs to a child, or
127 procures another person to display his or her sex organs to a
128 child, for the purpose of gratifying the sexual desire of the
129 parent, guardian or custodian, of the person making such
130 display, or of the child, or for the purpose of affronting or
131 alarming the child;

132 (j) "Sexual contact" means sexual contact as that term
133 is defined in section one, article eight-b, chapter sixty-one
134 of this code;

135 (k) "Sexual exploitation" means an act whereby:

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

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

148 (l) "Sexual intercourse" means sexual intercourse as
149 that term is defined in section one, article eight-b, chapter
150 sixty-one of this code.

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

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

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

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

22 (b) In any proceeding under this article, the parents or
23 custodians may, prior to final hearing, move to be allowed
24 an improvement period of three to twelve months in order to
25 remedy the circumstances or alleged circumstances upon
26 which the proceeding is based. The court shall allow one
27 such improvement period unless it finds compelling
28 circumstances to justify a denial thereof, but may require
29 temporary custody in the state department or other agency
30 during the improvement period. An order granting such
31 improvement period shall require the department to
32 prepare and submit to the court a family case plan in
33 accordance with the provisions of section three, article
34 six-d, of this chapter.

35 (c) In any proceeding under this article, the party or

36 parties having custody of the child shall be afforded a
37 meaningful opportunity to be heard, including the
38 opportunity to testify and to present and cross-examine
39 witnesses. The petition shall not be taken as confessed. A
40 transcript or recording be made of all proceedings unless
41 waived by all parties to the proceeding. The rules of
42 evidence shall apply. Where relevant, the court shall
43 consider the efforts of the state department to remedy the
44 alleged circumstances. At the conclusion of the hearing the
45 court shall make a determination based upon the evidence
46 and shall make findings of fact and conclusions of law as to
47 whether such child is abused or neglected, which shall be
48 incorporated into the order of the court. The findings must
49 be based upon conditions existing at the time of the filing of
50 the petition and proven by clear and convincing proof.

51 (d) Any petition filed and any proceeding held under the
52 provisions of this article shall, to the extent practicable, be
53 given priority over any other civil action before the court,
54 except proceedings under article two-a, chapter forty-eight
55 of this code and actions in which trial is in progress. Any
56 petition filed under the provisions of this article shall be
57 docketed immediately upon filing. Any hearing to be held at
58 the end of an improvement period and any other hearing to
59 be held during any proceedings under the provisions of this
60 article shall be held as nearly as practicable on successive
61 days and, with respect to said hearing to be held at the end
62 of an improvement period, shall be held as close in time as
63 possible after the end of said improvement period.

64 (d) Following the court's determination, it shall be
65 inquired of the parents or custodians whether or not appeal
66 is desired and the response transcribed. A negative response
67 shall not be construed as a waiver. The evidence shall be
68 transcribed and made available to the parties or their
69 counsel as soon as practicable, if the same is required for
70 purposes of further proceedings. If an indigent person
71 intends to pursue further proceedings, the court reporter
72 shall furnish a transcript of the hearing without cost to the
73 indigent person, if an affidavit is filed stating that he cannot
74 pay therefor.

§49-6-3. Same — Temporary custody.

1 (a) Upon the filing of a petition, the court may order that

2 a child alleged to be an abused or neglected child be
3 delivered for not more than ten days into the custody of the
4 state department or a responsible relative, pending a
5 preliminary hearing, if it finds that: (1) There exists
6 imminent danger to the physical well-being of the child,
7 and (2) there are no reasonably available alternatives to
8 removal of the child, including, but not limited to, the
9 provision of medical, psychiatric, psychological or
10 homemaking services in the child's present custody. In a
11 case where there is more than one child in the home, the
12 petition shall so state, and notwithstanding the fact that the
13 allegations of abuse or neglect may pertain to less than all of
14 such children, each child in the home for whom relief is
15 sought shall be made a party to the proceeding. Even though
16 the acts of abuse or neglect alleged in the petition were not
17 directed against a specific child who is named in the
18 petition, the court shall order the removal of such child,
19 pending final disposition, if it finds that there exists
20 imminent danger to the physical well-being of the child and
21 a lack of reasonably available alternatives to removal. The
22 initial order directing such custody shall contain an order
23 appointing counsel and scheduling the preliminary
24 hearing, and upon its service shall require the immediate
25 transfer of custody of such child or children to the state
26 department or a responsible relative.

27 (b) Whether or not the court orders immediate transfer
28 of custody as provided in subsection (a) of this section, if the
29 facts alleged in the petition demonstrate to the court that
30 there exists imminent danger to the child, the court may
31 schedule a preliminary hearing giving the respondents at
32 least five days' actual notice. If the court finds at the
33 preliminary hearing that there are no alternatives less
34 drastic than removal of the child and that a hearing on the
35 petition cannot be scheduled in the interim period, the court
36 may order that the child be delivered into the temporary
37 custody of the state department or an appropriate person
38 or agency for a period not exceeding sixty days: *Provided,*
39 That if the court grants an improvement period as provided
40 in subsection (b), section two of this article, the sixty-day
41 limit upon temporary custody may be waived.

42 (c) If a child or children shall, in the presence of a child
43 protective service worker of the department of human

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44 services, be in an emergency situation which constitutes an
45 imminent danger to the physical well-being of the child or
46 children, as that phrase is defined in section three, article
47 one of this chapter, and if such worker has probable cause to
48 believe that the child or children will suffer additional child
49 abuse or neglect or will be removed from the county before a
50 petition can be filed and temporary custody can be ordered,
51 the worker may, prior to the filing of a petition, take the
52 child or children into his or her custody without a court
53 order: *Provided*, That after taking custody of such child or
54 children prior to the filing of a petition, the worker shall
55 forthwith appear before a circuit judge or a juvenile referee
56 of the county wherein custody was taken, or if no such judge
57 or referee be available, before a circuit judge or a juvenile
58 referee of an adjoining county, and shall immediately apply
59 for an order ratifying the emergency custody of the child
60 pending the filing of a petition. The circuit court of every
61 county in the state shall appoint at least one of the
62 magistrates of the county to act as a juvenile referee, who
63 shall serve at the will and pleasure of the appointing court,
64 and who shall perform the functions prescribed for such
65 position by the provisions of this subsection. The parents,
66 guardians or custodians of the child or children may be
67 present at the time and place of application for an order
68 ratifying custody, and if at the time the child or children are
69 taken into custody by the worker, the worker knows which
70 judge or referee is to receive the application, the worker
71 shall so inform the parents, guardians or custodians. The
72 application for emergency custody may be on forms
73 prescribed by the supreme court of appeals or prepared by
74 the prosecuting attorney or the applicant, and shall set
75 forth facts from which it may be determined that the
76 probable cause described above in this subsection exists.
77 Upon such sworn testimony or other evidence as the judge
78 or referee deems sufficient, the judge or referee may order
79 the emergency taking by the worker to be ratified. If
80 appropriate under the circumstances, the order may
81 include authorization for an examination as provided for in
82 subsection (b), section four of this article. If a referee issues
83 such an order the referee shall by telephonic
84 communication have such order orally confirmed by a
85 circuit judge of the circuit or an adjoining circuit who shall

86 on the next judicial day enter an order of confirmation. If
87 the emergency taking is ratified by the judge or referee,
88 emergency custody of the child or children shall be vested in
89 the state department until the end of the next judicial day,
90 at which time any such child taken into emergency custody
91 shall be returned to the custody of his or her parent,
92 guardian or custodian unless a petition has been filed and
93 custody of the child has been transferred under the
94 provisions of section three of this article.

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

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

23 (b) If a person with authority to file a petition under the
24 provisions of this article shall have probable cause to
25 believe that evidence exists that a child has been abused or
26 neglected and that such evidence may be found by a medical
27 examination, the person may apply to a circuit judge or
28 juvenile referee for an order to take such child into custody
29 for delivery to a physician or hospital for examination. The
30 application may be on forms prescribed by the supreme
31 court of appeals or prepared by the prosecuting attorney or

32 the applicant, and shall set forth facts from which it may be
33 determined that probable cause exists for such belief. Upon
34 such sworn testimony or other evidence as the judge or
35 referee deems sufficient, the judge or referee may order any
36 law enforcement officer to take the child into custody and
37 deliver the child to a physician or hospital for examination.
38 If a referee issues such an order the referee shall by
39 telephonic communication have such order orally
40 confirmed by a circuit judge of the circuit or an adjoining
41 circuit who shall on the next judicial day enter an order of
42 confirmation. Any child welfare worker and the child's
43 parents, guardians or custodians may accompany the
44 officer for such examination. After the examination, the
45 officer may return the child to the custody of his parent,
46 guardian or custodian, retain custody of the child or deliver
47 custody to the state department until the end of the next
48 judicial day, at which time the child shall be returned to the
49 custody of his or her parent, guardian or custodian unless a
50 petition¹ has been filed and custody of the child has been
51 transferred to the department under the provisions of
52 section three of this article.

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

- 1 (a) Following a determination pursuant to section two
- 2 of this article wherein the court finds a child to be abused or
- 3 neglected, the court may request from the state department
- 4 information about the history, physical and emotional
- 5 condition and present situation of the child. The court shall
- 6 forthwith proceed to disposition giving both the petitioner
- 7 and respondents an opportunity to be heard. The court shall
- 8 give precedence to dispositions in the following sequence:
- 9 (1) Dismiss the petition;
- 10 (2) Refer the child, the abusing parent, or other family
- 11 members to a community agency for needed assistance and
- 12 dismiss the petition;
- 13 (3) Return the child to his or her own home under
- 14 supervision of the state department;
- 15 (4) Order terms of supervision calculated to assist the
- 16 child and the abusing parent or parents which prescribe the
- 17 manner of supervision and care of the child and which are
- 18 within the ability of the parent or custodian to perform;
- 19 (5) Upon a finding that the abusing parent or parents

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

25 (6) Upon a finding that there is no reasonable likelihood
26 that the conditions of neglect or abuse can be substantially
27 corrected in the near future, and when necessary for the
28 welfare of the child, terminate the parental or custodial
29 rights and responsibilities and commit the child to the
30 permanent guardianship of the state department or a
31 licensed child welfare agency. If the court shall so find, then
32 in fixing its dispositional order, the court shall consider the
33 following factors: (1) The child's need for continuity of care
34 and caretakers; (2) the amount of time required for the child
35 to be integrated into a stable and permanent home
36 environment; and (3) other factors as the court considers
37 necessary and proper. Notwithstanding any other
38 provisions of this article, the permanent parental rights
39 shall not be terminated if a child fourteen years of age or
40 older or otherwise of an age of discretion as determined by
41 the court, objects to such termination. No adoption of a
42 child shall take place until all proceedings for termination
43 of parental rights under this article and appeals thereof are
44 final.

45 (b) As used in this section, "no reasonable likelihood
46 that conditions of neglect or abuse can be substantially
47 corrected" shall mean that, based upon the evidence before
48 the court, the abusing adult or adults have demonstrated an
49 inadequate capacity to solve the problems of abuse or
50 neglect, on their own or with help. Such conditions shall be
51 deemed to exist in the following circumstances, which shall
52 not be exclusive:

53 (1) The abusing parent or parents have habitually
54 abused or are addicted to alcohol, controlled substances or
55 drugs, to the extent that proper parenting skills have been
56 seriously impaired and such abusing parent or parents have
57 not responded to or followed through the recommended and
58 appropriate treatment which could have improved the
59 capacity for adequate parental functioning;

60 (2) The abusing parent or parents have willfully refused
61 or are presently unwilling to cooperate in the development

62 of a reasonable family case plan designed to lead to the
63 child's return to their care, custody and control;

64 (3) The abusing parent or parents have not responded to
65 or followed through with a reasonable family case plan or
66 other rehabilitative efforts of social, medical, mental health
67 or other rehabilitative agencies designed to reduce or
68 prevent the abuse or neglect of the child, as evidenced by the
69 continuation or insubstantial diminution of conditions
70 which threatened the health, welfare or life of the child;

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

73 (5) The abusing parent or parents have repeatedly or
74 seriously injured the child physically or emotionally, or
75 have sexually abused or sexually exploited the child, and
76 the degree of family stress and the potential for further
77 abuse and neglect are so great as to preclude the use of
78 resources to mitigate or resolve family problems or assist
79 the abusing parent or parents in fulfilling their
80 responsibilities to the child; or

81 (6) The abusing parent or parents have incurred
82 emotional illness, mental illness or mental deficiency of
83 such duration or nature as to render such parent or parents
84 incapable of exercising proper parenting skills or
85 sufficiently improving the adequacy of such skills.

86 (c) The court may as an alternative disposition allow to
87 the parents or custodians an improvement period not to
88 exceed twelve months. During this period the parental
89 rights shall not be permanently terminated and the court
90 shall require the parent to rectify the conditions upon
91 which the determination was based. No more than one such
92 postdispositional improvement period may be granted. The
93 court may order the child to be placed with the parents, a
94 relative, the state department or other appropriate
95 placement during the period. At the end of the period the
96 court shall hold a hearing to determine whether the
97 conditions have been adequately improved, and at the
98 conclusion of such hearing, shall make a further
99 dispositional order in accordance with this section.

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

1 (a) If, twelve months after receipt of physical or legal
2 custody of a child, the state department has not placed a
3 child in permanent foster care or an adoptive home or

4 placed the child with a natural parent, the state department
5 shall file with the court a petition stating the child's
6 situation, the efforts that have been made to place the child
7 in a permanent situation, the present foster care
8 arrangements and the plan for pursuing permanent
9 arrangements. "Permanent foster care" shall mean a
10 written arrangement with an adult or adults following a
11 six-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 right
15 to be present to: The child, if twelve years of age or older;
16 the child's parents; the child's guardians; the child's foster
17 parents; and such other persons as the court may in its
18 discretion direct. At the conclusion of the proceeding the
19 court shall in accordance with the best interests of the child
20 enter 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 so
25 long as the conditions are effective. If the child remains in
26 the physical or legal custody of the state department, the
27 state department shall file a supplementary petition with
28 the court within eighteen months and every eighteen
29 months thereafter until the child is placed in an adoptive
30 home or permanent foster care or returned to his or her
31 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.

§49-6-10. Duties of prosecuting attorney.

1 It shall be the duty of every prosecuting attorney to fully
2 and promptly cooperate with persons seeking to apply for
3 relief under the provisions of this article in all cases of
4 suspected child abuse and neglect, to promptly prepare
5 applications and petitions for relief requested by such
6 persons, to investigate reported cases of suspected child
7 abuse and neglect for possible criminal activity and to
8 report at least annually to the grand jury regarding the
9 discharge of his or her duties with respect thereto.

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

§49-6A-5. Reporting procedures.

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

9 A copy of any report of serious injury shall be forwarded
10 by the department to the appropriate law-enforcement
11 agency, the prosecuting attorney or the coroner or medical
12 examiner's office. All reports under this article shall be
13 confidential, and unless there are pending proceedings with
14 regard thereto, shall be destroyed six years following their
15 preparation. Reports of known or suspected institutional
16 child abuse or neglect shall be made and received as all
17 other reports made pursuant to this article.

§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 be
3 abused or neglected, or required by section five of this
4 article to forward a copy of a report of serious injury, who
5 knowingly fails to do so or knowingly prevents another
6 person acting reasonably from doing so, shall be guilty of a
7 misdemeanor, and, upon conviction thereof, shall be
8 confined in the county jail not more than ten days or fined
9 not more than one hundred dollars, or both.

**ARTICLE 6C. CHILDREN'S TRUST FUND FOR CHILD ABUSE AND
NEGLECT PREVENTION.**

§49-6C-1. Legislative findings and intent.

1 The Legislature finds that child abuse and neglect are
2 threats to the family unit and impose major expenses on
3 society. The Legislature further finds that there is a need to
4 assist private and public agencies in identifying and
5 establishing community-based educational and service
6 programs for the prevention of child abuse and neglect. It is

7 the intent of the Legislature that an increase in prevention
8 programs will help reduce the breakdown in families and
9 thus reduce the need for state intervention and state
10 expense. It is further the intent of the Legislature that child
11 abuse and neglect prevention programs be partnerships
12 between communities, citizens and the state.

§49-6C-2. Definitions.

1 For the purposes of this article:

2 (a) "Commission" or "commission on children and
3 youth" means the commission on children and youth as
4 heretofore established under the provisions of executive
5 order no. 1 — 79 within the department of human services;

6 (b) "Trust fund" means the children's trust fund for the
7 prevention of child abuse and neglect as hereinafter
8 established in this article.

§49-6C-3. Establishment of children's trust fund; federal funds, gifts, bequests and donations; administration of fund.

1 There is established the children's trust fund for the
2 purpose of preventing child abuse and neglect. The trust
3 fund shall consist of federal funds granted by Congress or
4 executive order for the purposes of this article as well as
5 gifts, bequests and donations from individuals, private
6 organizations or foundations. Each state taxpayer may
7 voluntarily contribute a portion of his state income tax
8 refund to the children's trust fund by following the
9 procedures designated in section five of this article. All
10 funds received in the manner provided herein shall be
11 transmitted to the state treasurer for deposit in the trust
12 fund. All interest accruing from investment of moneys in
13 the trust fund shall be credited to the fund. The legislative
14 auditor shall conduct an annual audit of the trust fund.

§49-6C-4. Disbursements from children's trust fund.

1 (a) The commission on children and youth, upon a
2 majority vote of the members appointed and then serving,
3 may determine the manner in which moneys credited to the
4 children's trust fund shall be expended, and shall direct the
5 commissioner of the department of human services to
6 transmit to the auditor his requisition drawn to the order of

7 a governmental agency, nonprofit private organization, or
8 combinations thereof, as the case may be, for the following
9 purposes:

10 (1) Establishing and maintaining programs for the
11 prevention of child abuse and neglect. Such programs may
12 include, but are not limited to, community-based programs
13 related to crisis care, aid to parents, child abuse counseling,
14 support groups for abusive or potentially abusive parents
15 and their children and early identification of families where
16 the potential for child abuse and neglect exists;

17 (2) Providing educational programs directed toward the
18 prevention of child abuse and neglect. Such programs may
19 include, but are not limited to, community-based
20 educational programs on prenatal care, perinatal bonding,
21 child development, basic child care, care of children with
22 special needs, coping with family stress, and safety skills for
23 children in self care;

24 (3) Establishing and maintaining a continuing program
25 of community relations aimed at (A) interpreting child
26 protective services to the community, (B) promoting the
27 identification of children in need of protection, and (C)
28 maintaining clear lines of responsibility with hospital,
29 education, law enforcement, juvenile court, and other
30 publicly and privately employed personnel providing child
31 neglect and abuse services;

32 (4) Establishing and maintaining local, county, or
33 multicounty child abuse prevention organizations,
34 including child abuse prevention chapters that comply with
35 the regulations of the national committee for prevention of
36 child abuse;

37 (5) Assisting public agencies or nonprofit private
38 organizations or combinations thereof in making
39 applications for grants from, or in entering into contracts
40 with, the secretary of the Federal Department of Health and
41 Human Services for demonstration programs and projects
42 designed to prevent child abuse and neglect;

43 (6) Matching federal moneys to provide increased
44 funding for educational programs and services related to
45 the prevention of child abuse and neglect; and

46 (7) Research for, and evaluation of, educational
47 programs and services related to the prevention of child
48 abuse and neglect;

49 (b) For each year that the trust fund exists, the
 50 commission may authorize the expenditure of no more than
 51 one half of the income of the trust fund for that year for the
 52 aforesaid purposes. No less than one half of the annual
 53 income of the trust fund shall be invested, with the interest
 54 thereon being returned to the fund.

§49-6C-5. Contribution of portion of income tax refund to children's trust fund.

1 (a) Contributions to the children's trust fund will be
 2 derived, in part, from voluntary contributions of a portion
 3 of refunds due to taxpayers, as designated by taxpayers on
 4 state personal income tax return forms.

5 (b) Each West Virginia individual income tax return
 6 shall contain a designation as follows:

7 **"WEST VIRGINIA CHILDREN'S TRUST FUND CONTRIBUTION PROGRAM**

8 Check if you wish to designate a portion of your tax
 9 refund to this trust fund, which is established to fund
 10 programs and services to prevent child abuse and neglect:

11 \$2 () \$5 () \$10 () Other \$_____ ()

12 If joint return, check if spouse wishes to designate a
 13 portion of tax refund:

14 \$2 () \$5 () \$10 () Other \$_____ ()"

15 Each individual taxpayer desiring to voluntarily
 16 contribute to the trust fund may so indicate by placing an
 17 "X" in the appropriate box on the state income tax return
 18 form. His or her contribution shall be credited to the trust
 19 fund.

20 (c) The tax department shall determine by the first day
 21 of July of each year the total amount designated pursuant to
 22 this section and shall report that amount to the state
 23 treasurer who shall credit that amount to the children's
 24 trust fund.

25 (d) The trust fund will collect moneys until the amount
 26 of five million dollars is reached.

27 (e) The provisions of this section shall apply to tax
 28 return forms filed after the first day of January, one
 29 thousand nine hundred eighty-five.

§49-6C-6. Commission on children and youth established; composition; duties and responsibilities.

1 (a) The commission on children and youth as heretofore
 2 established, is continued, and is hereby established as a

3 statutory body within the department of human services.
4 Until the first day of July, one thousand nine hundred
5 eighty-four, the commission shall be composed of at least
6 twenty and no more than thirty citizen members appointed
7 by the governor to serve at his will and pleasure, and shall
8 be generally representative of the state's citizens. In
9 addition, the director of health, the superintendent of
10 schools, the commissioner of corrections, the commissioner
11 of the department of human services and the director of the
12 governor's office of economic and community development
13 or their designated representatives shall serve as voting ex
14 officio members of the commission. After the first day of
15 July, one thousand nine hundred eighty-four, the
16 commission shall be composed of twenty citizen members to
17 be appointed by the governor. In addition, the director of
18 health, the superintendent of schools, the commissioner of
19 corrections, the commissioner of the department of human
20 services and the director of the governor's office of
21 economic and community development or their designated
22 representatives shall serve as voting ex officio members of
23 the commission. Of the twenty initial members appointed
24 by the governor, ten shall be appointed for a term of two
25 years, and ten shall be appointed for a term of four years.
26 Upon the expiration of the initial terms, the governor shall
27 make appointments of members to the board to serve for
28 terms of four years each. Any vacancy in the board shall be
29 filled by appointment by the governor, with such newly
30 appointed member to serve for the remainder of the
31 unexpired term. No citizen member shall be appointed to
32 serve more than two consecutive four year terms. Members
33 of the commission may receive no compensation, but shall
34 be entitled to reimbursement for actual and necessary
35 expenses incurred in the performance of their duties. All
36 funding for administrative purposes, and all staff for the
37 commission shall be provided by the department of human
38 services.

39 (b) The commission, in carrying out its duties under the
40 provisions of this article, shall do all of the following:

41 (1) Develop a state plan for distribution of available
42 moneys from the children's trust fund;

43 (2) Develop criteria for and determine the maximum
44 size of grants for disbursement from the trust fund;

45 (3) Award grants in accordance with established
46 criteria;

47 (4) Monitor disbursements from the trust fund;

48 (5) Provide for the exchange of information regarding
49 programs funded by moneys from the trust fund;

50 (6) Prepare an annual report describing the financial
51 status of the trust fund, criteria established for the
52 awarding of grants, and the grants awarded; and

53 (7) Report before the regular session of the Legislature
54 in the year one thousand nine hundred eighty-five, and
55 before each regular legislative session thereafter, to the
56 governor and the Legislature concerning the commission's
57 activities and the effectiveness of those activities in
58 fostering the prevention of child abuse and neglect.

59 (c) In addition to the duties imposed by the provisions of
60 this section, the commission shall also continue the
61 following responsibilities formerly imposed by executive
62 order:

63 (1) To advocate generally the interests of children and
64 youth in this state;

65 (2) To assist in developing cooperation among public
66 and private agencies engaged in the delivery of services to
67 children and youth in this state;

68 (3) To research the specific needs of children and youth,
69 to assess current and proposed programs to meet these
70 needs and to make findings and recommendations to the
71 Governor and the Legislature annually;

72 (4) To serve as the liaison for West Virginia with the
73 White House Conference on Children and Youth and with
74 any other national or international conferences or
75 committees when representation of West Virginia's interest
76 would bring benefit to its children and youth.

77 (5) To perform such other functions as may be directed
78 by the Governor.

§49-6C-8. Recommendations to governor and Legislature.

1 The commission shall recommend to the governor and the
2 Legislature such changes in state programs, statutes,
3 policies, budgets and standards as they believe will reduce
4 the problem of child abuse and neglect, improve
5 coordination among state agencies that provide prevention
6 services and improve the condition of children and parents

7 or guardians who are in need of child abuse and neglect
8 services.

ARTICLE 6D. WEST VIRGINIA CHILD PROTECTIVE SERVICES ACT.

§49-6D-1. Short title.

1 This article shall be known and cited as the "West
2 Virginia Child Protective Services Act."

§49-6D-2. Purpose and Intent.

1 (a) In pursuit of the purposes of this chapter to provide a
2 comprehensive system of child welfare throughout the state
3 which will (1) assure to each child such care and guidance,
4 preferably in the child's home, as will serve the spiritual,
5 emotional, mental and physical welfare of the child, and (2)
6 preserve and strengthen the family ties wherever possible,
7 while recognizing both the fundamental rights of
8 parenthood and the state's responsibility to assist the
9 family in providing the necessary training and education of
10 all children, the Legislature enacts this article to provide
11 for the protection of the children of this state from abuse
12 and neglect and to provide direction to responsible state
13 officers. This article is enacted in pursuit of the purpose of
14 this chapter and the heretofore expressed intention of the
15 Legislature to provide for the removal of a child from the
16 custody of the child's parent's only when the child's welfare
17 cannot be otherwise adequately safeguarded, and is
18 enacted to secure to a child removed from the family a
19 degree of custody, care and control consistent with the
20 child's best interests and the other goals of this chapter, as
21 expressed in section one, article one of this chapter.

22 (b) In light of this purpose, the Legislature intends to
23 provide for:

24 (1) The acceptance by the department of referrals or
25 reports of abuse or neglect, both judicial and extra judicial,
26 voluntary or involuntary, and the offering of opportunities
27 by the department whereby parents, guardians, or
28 custodians and their children may avail themselves of
29 public and private resources offering programs and services
30 which are primarily preventive and non-punitive and
31 geared toward a rehabilitation of the home and a treatment
32 of the underlying factors which cause or tend to cause abuse
33 and neglect;

34 (2) The vigorous and fair assessment and investigation
35 of alleged cases of child abuse or neglect to the end that no
36 child subjected to abuse or neglect shall be left without
37 assistance consistent in all respects with the purposes and
38 goals of this chapter and article;

39 (3) The thorough and professional diagnosis of cases to
40 determine whether child abuse or neglect exists, whether
41 court action is appropriate, or whether a high risk or danger
42 to children requires emergency services or the initiation of
43 an immediate response;

44 (4) An assessment of the family, family members, and
45 family problems in each case, to identify strengths as well as
46 areas for improvement, and to determine how best to
47 augment the protective services functions of the
48 department with community resources available to and
49 needed by the family, to the end that a plan can be
50 implemented whereby every abused or neglected child in
51 the state will be provided an environment for his or her
52 custody, care and control which offers as normal a family
53 life as practicable, free of abuse or neglect, preferably in the
54 child's own home.

55 (5) In cases where removal of a child is required, but a
56 termination of parental rights is not ordered, the
57 opportunity for the family to visit and maintain family ties
58 in the family home or in home-like and other conducive
59 surroundings, avoiding, wherever possible, the austere
60 surroundings of a public or private agency with limited
61 time and lack of privacy.

62 (6) The fulfillment of the state's responsibility to assist
63 the family in a manner consonant with the purposes of this
64 article, even in cases requiring temporary removal of the
65 child, without fear by the citizens that the state's exercise of
66 that responsibility will be unfairly used as a means of
67 terminating family ties.

68 (7) The prompt and effective termination of parental
69 rights in cases where there is an abject failure of the parents
70 or custodians to reasonably utilize fair, professionally
71 developed and communicated opportunities to end the
72 abuse or neglect.

§49-6D-3. Family case plans for parents of abused or neglected children.

1 (a) Within the limits of funds available, the department

2 of human services shall develop a family case plan for every
3 family wherein a person has been referred to the
4 department after being allowed an improvement period
5 under the provisions of subsection (b), section two, or
6 subsection (c), section five, article six of this chapter, and
7 for each family referred to the department for supervision
8 and treatment following a determination by a court that a
9 parent, guardian, or custodian in such family has abused or
10 neglected a child. The department may also prepare a
11 family case plan for any person who voluntarily seeks child
12 abuse and neglect services from the department, or who is
13 referred to the department by another public agency or
14 private organization. The family case plan is to clearly set
15 forth an organized, realistic method of identifying family
16 problems and the logical steps to be used in resolving or
17 lessening those problems. Every family case plan prepared
18 by the department shall contain the following:

19 (1) A listing of specific, measurable, realistic goals to be
20 achieved;

21 (2) An arrangement of goals into an order of priority;

22 (3) A listing of the problems that will be addressed by
23 each goal;

24 (4) A specific description of how the assigned
25 caseworker or caseworkers and the abusing parent,
26 guardian, or custodian will achieve each goal;

27 (5) A description of the departmental and community
28 resources to be used in implementing the proposed actions
29 and services;

30 (6) A list of the services which will be provided;

31 (7) Time targets for the achievement of goals or portions
32 of goals;

33 (8) An assignment of tasks to the abusing or neglecting
34 parent, guardian, or custodian, to the caseworker or
35 caseworkers, and to other participants in the planning
36 process; and

37 (9) A designation of when and how often tasks will be
38 performed.

39 (b) In cases where the family has been referred to the
40 department by a court under the provisions of this chapter,
41 and further action before the court is pending, the family
42 case plan described in section (a) of this section shall be
43 furnished to the court within thirty days after the entry of

44 the order referring the case to the department, and shall be
45 available to counsel for the parent, guardian, or custodian
46 and counsel for the child or children. The department shall
47 encourage participation in the development of the family
48 case plan by the parent, guardian or custodian, and, if the
49 child is above the age of twelve years and the child's
50 participation is otherwise appropriate, by the child. It shall
51 be the duty of counsel for the participants to participate in
52 the development of the family case plan. The family case
53 plan may be modified from time to time by the department
54 to allow for flexibility in goal development, and in each
55 such case the modifications shall be submitted to the court
56 in writing. The court shall examine the proposed family
57 case plan or any modification thereof, and upon a finding by
58 the court that the plan or modified plan can be easily
59 communicated, explained, and discussed so as to make the
60 participants accountable and able to understand the
61 reasons for any success or failure under the plan, the court
62 shall inform the participants of the probable action of the
63 court if goals are met or not met.

64 (c) (1) In addition to the family case plan provided for
65 under the provisions of subsection (b) of this section, the
66 department shall prepare, as an appendix to the family case
67 plan, an expanded "worker's case plan". As utilized by the
68 department under the provisions of this section, the
69 worker's case plan shall consist of the following:

70 (A) All of the information contained in the family case
71 plan described in subsection (c) of this section;

72 (B) A prognosis for each of the goals projected in the
73 family case plan, assessing the capacity of the parent,
74 guardian or custodian to achieve the goal and whether
75 available treatment services are likely to have the desired
76 outcome;

77 (C) A listing of the criteria to be used to assess the degree
78 to which each goal is attained;

79 (D) A description of when and how the department will
80 decide when and how well each goal has been attained;

81 (E) If possible, a listing of alternative methods and
82 specific services which the caseworker or caseworkers may
83 consider using if the original plan does not work; and

84 (F) A listing of criteria to be used in determining when
85 the family case plan should be terminated.

86 (2) Because the nature of the information contained in
87 the worker's case plan described in subdivision (1) of this
88 subsection may, in some cases, be construed to be negative
89 with respect to the probability of change, or may be viewed
90 as a caseworker's attempt to impose personal values into
91 the situation, or may raise barriers of hostility and
92 resistance between the caseworker and the family
93 members, the worker's case plan shall not be made
94 available to the court or to persons outside of the
95 department, but shall be used by the department for the
96 purpose of confirming the effectiveness of the family case
97 plan or for determining that changes in the family case plan
98 need to be made.


new 99 (d) In furtherance of the provisions of this article, the
100 commissioner of the department of human services shall,
101 within the limits of available funds, establish programs
102 and services for the following purposes:

103 (1) For the development and establishment of training
104 programs for professional and paraprofessional personnel
105 in the fields of medicine, law, education, social work, and
106 other relevant fields who are engaged in, or intend to work
107 in, the field of the prevention, identification, and treatment
108 of child abuse and neglect; and training programs for
109 children, and for persons responsible for the welfare of
110 children, in methods of protecting children from child
111 abuse and neglect;

112 (2) For the establishment and maintenance of centers,
113 serving defined geographic areas, staffed by
114 multidisciplinary teams and community teams of personnel
115 trained in the prevention, identification, and treatment of
116 child abuse and neglect cases, to provide a broad range of
117 services related to child abuse and neglect, including direct
118 support and supervision of satellite centers and attention
119 homes, as well as providing advice and consultation to
120 individuals, agencies, and organizations which request
121 such services;

122 (3) For furnishing services of multidisciplinary teams
123 and community teams, trained in the prevention,
124 identification, and treatment of child abuse and neglect
125 cases, on a consulting basis to small communities where
126 such services are not available; ~~and~~ *new*

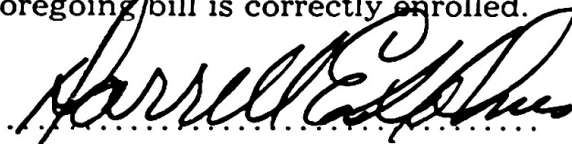
127 (4) For other innovative programs and projects that

128 show promise of successfully identifying, preventing or
129 remedying the causes of child abuse and neglect, including,
130 but not limited to, programs and services designed to
131 improve and maintain parenting skills, programs and
132 projects for parent self-help, and for prevention and
133 treatment of drug-related child abuse and neglect; *and* 

134 (5) Assisting public agencies or nonprofit private
135 organizations or combinations thereof in making
136 applications for grants from, or in entering into contracts
137 with, the secretary of the Federal Department of Health and
138 Human Services for demonstration programs and projects
139 designed to identify, prevent and treat child abuse and
140 neglect.

141 (e) Agencies, organizations and programs funded to
142 carry out the purposes of this section shall be structured so
143 as to comply with any applicable federal law, any
144 regulation of the federal department of health and human
145 services or the secretary thereof, and any final
146 comprehensive plan of the federal advisory board on child
147 abuse and neglect. In funding organizations, the
148 department shall, to the extent feasible, insure that
149 parental organizations combating child abuse and neglect
150 receive preferential treatment.

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


.....
Chairman Senate Committee

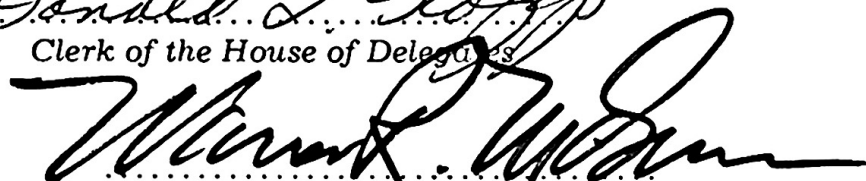

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Chairman House Committee

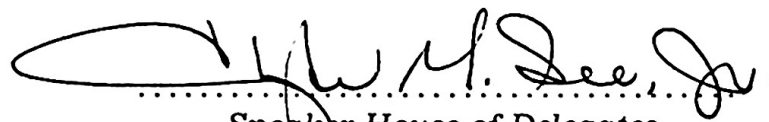
Originated in the Senate.

In effect ninety days from passage.

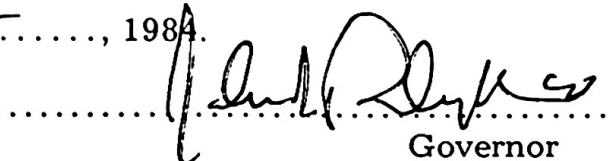

.....
Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within... *is approved* this the *29*
day of *March*, 198*4*.


.....
Governor

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