

No. 2094

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

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ENROLLED

HOUSE BILL No. 2094

(By Mr. Del. Davis + Del. Flanigan)

— ● —

Passed March 9, 1986

In Effect July 1, 1986 ~~Passage~~

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H. B. 2094

(By DELEGATE DAVIS and DELEGATE FLANIGAN)

[Passed March 9, 1986; in effect July 1, 1986.]

AN ACT to repeal articles seven, eight and nine, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section forty-two, article seven, chapter thirty-eight of said code; to amend and reenact section eleven, article eight of said chapter thirty-eight; to amend and reenact section one hundred thirty, article two, chapter forty-six-a of said code; to amend and reenact sections one, thirteen and fifteen, article two, chapter forty-eight of said code; to further amend article two of said chapter forty-eight by adding thereto a new section designated section fifteen-a; and to further amend said code by adding thereto a new chapter, designated chapter forty-eight-a, relating to the enforcement of support and other family obligations generally; establishing the priority of support obligations over other garnishment of wages; providing that exemptions from levy shall not affect claims for support; establishing the priority of support claims over garnishments arising out of a consumer credit sale or consumer loan; defining the terms "earnings", "disposable earnings" and "income"; providing that in divorce actions, temporary and permanent support orders will require that health care insurance coverage be paid for by the noncustodial parent; requiring support orders to include a provision for automatic withholding from income if arrearages in support occur; enacting the "Family Obligations En-

forcement Act"; setting forth the legislative purpose and intent; defining certain terms related to the enforcement of support obligations; establishing the West Virginia child advocate office; stating the legislative purpose and intent and describing the responsibility of the child advocate office; recognizing the acceptance of federal purposes and the need for compliance with federal requirements and standards; providing for the appointment of the director of the child advocate office; describing the qualifications of the director; requiring an oath and bond; providing that the director may not hold other office or engage in political activity; continuing the functions and responsibilities of the office of child support enforcement in the child advocate office; prescribing how the child advocate office is to be organized; describing the powers and duties of the director; authorizing the director to enter into cooperative agreements; establishing a parent locator service; requiring the child advocate office to cooperate with other states in the enforcement of domestic relations obligations; prescribing how amounts collected as support are to be distributed; setting forth when support payments are to be made to the child advocate office; authorizing the child advocate office to establish an automatic data processing and retrieval system; establishing procedures for obtaining support from federal tax refunds, state income tax refunds, unemployment compensation and workers' compensation; establishing procedures for providing information to credit reporting agencies; requiring the child advocate office to publicize child support enforcement services; authorizing the director to promulgate legislative rules governing the waiver of fees; establishing a revenue fund in the state treasury to be known as the "Family Law Masters' Fund"; creating a position within the child advocate office of an employee to be known as the childrens' advocate; providing for location of the childrens' advocates; setting forth the duties of the childrens' advocates; requiring annual statement of accounts to be provided to each obligee and obligor; providing for the enforcement of custody and visitation orders; requiring investigations of support and visitation orders and

petitioning for enforcement and modification; providing for filling vacancies in the position of childrens' advocate and the appointment of an interim childrens' advocate; providing for the appointment of family law masters by the governor; fixing the salary of the master and his or her secretary-clerk; providing for the geographic distribution of the offices of the family law master; describing the actions to be heard by the family law master; establishing hearing procedures; providing for the entry of default orders and temporary orders; authorizing the master to enter master's final orders; providing for review of a master's action or a master's final order; establishing the review by the circuit court, form of petition for review, brief in opposition and review; defining remedies for the enforcement of support obligations and visitations; establishing an action to obtain an order for support of a minor child; providing for a collection of arrearages through a writ of execution, suggestion or suggestee execution; providing for the withholding of income of amounts payable as support; providing for a source of income to be liable to an obligee for any amount which the source of income fails to withhold; making it a misdemeanor for source of income to discharge, refuse to employ, or take disciplinary action against an obligor and setting forth the penalty therefor; providing for liens against real and personal property for overdue support; authorizing the childrens' advocate to enforce support orders through civil or criminal contempt proceedings, and setting forth the penalty for contempt; requiring the posting of bonds or giving security to guarantee payment of overdue support; authorizing the childrens' advocate to enforce visitation orders through civil or criminal contempt proceedings, and setting forth the penalty for contempt; describing procedures for cases before the childrens' advocate; providing for a civil action to establish paternity; providing for a statute of limitations for paternity actions; setting forth medical testing procedures to aid in the determination of paternity; providing for support to be paid upon the establishment of paternity; providing for the representation of parties; and enacting the "Revised Uniform Reciprocal Enforce-

ment of Support Act.”

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 38. LIENS.

ARTICLE 7. ATTACHMENT.

§38-7-42. Priority of attachments.

1 (a) Except as otherwise provided in subsection (b) of
2 this section, the attachment first served on the same
3 personal property, or on the person having such
4 property in his possession, or on the person indebted to
5 the defendant in the attachment suit, shall have priority
6 of lien; and the officer making the levy shall note on the
7 order of attachment the day and hour at which the levy
8 is made: *Provided*, That where two or more attachments
9 are delivered to the same officer at different times to
10 be served, he shall serve them in the order in which he
11 received them, and when they are delivered at the same
12 time they shall be served at the same time, and, if more
13 than one of such attachment be sustained, such of them
14 as are sustained shall be satisfied pro rata out of the
15 proceeds of the attached property.

16 (b) No garnishment of wages governed by the provi-
17 sions of this article will be given priority over a
18 voluntary assignment of wages to fulfill a support
19 obligation, a garnishment of wages to collect arrearages
20 in support payments, or a notice of withholding from
21 wages of amounts payable as support, notwithstanding

22 the fact that the garnishment in question or the
23 judgment upon which it is based may have preceded the
24 support-related assignment, garnishment, or notice of
25 withholding in point of time or filing.

ARTICLE 8. EXEMPTIONS FROM LEVY.

§38-8-11. No exemption from claims for child or spousal support, purchase money or taxes.

1 No exemption claimed under the preceding sections of
2 this article, or any of them, shall affect or impair any
3 claim for child or spousal support established or
4 enforced under the provisions of chapter forty-eight or
5 chapter forty-eight-a of this code, the purchase money
6 of the personal estate in respect to which such exemp-
7 tion is claimed, or any proceeding for the collection of
8 taxes, or county or district or municipal levies. Any
9 increase in such exemption provided by a prior enact-
10 ment of other sections of this article shall not be
11 applicable to liens and all other debts and liabilities
12 contracted and incurred prior to the effective date of the
13 prior enactment of such sections.

**CHAPTER 46A. WEST VIRGINIA CONSUMER
CREDIT AND PROTECTION ACT.**

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-130. Limitation on garnishment.

1 (1) For the purposes of the provisions in this chapter
2 relating to garnishment:

3 (a) "Disposable earnings" means that part of the
4 earnings of an individual remaining after the deduction
5 from those earnings of amounts required by law to be
6 withheld; and

7 (b) "Garnishment" means any legal or equitable
8 procedure through which the earnings of an individual
9 are required to be withheld for payment of a debt.

10 (2) The maximum part of the aggregate disposable
11 earnings of an individual for any workweek which is
12 subjected to garnishment to enforce payment of a
13 judgment arising from a consumer credit sale or

14 consumer loan may not exceed the lesser of

15 (a) Twenty percent of his disposable earnings for that
16 week, or

17 (b) The amount by which his disposable earnings for
18 that week exceed thirty times the federal minimum
19 hourly wage prescribed by section 6(a)(1) of the "Fair
20 Labor Standards Act of 1938", U.S.C. Title 19,
21 §206(a)(1), in effect at the time the earnings are payable.

22 (c) In the case of earnings for a pay period other than
23 a week, the commissioner shall prescribe by a rule a
24 multiple of the federal minimum hourly wage equivalent
25 in effect to that set forth in subdivision (b),
26 subsection (2) of this section.

27 (3) No court may make, execute or enforce an order
28 or process in violation of this section. Any time after a
29 consumer's earnings have been executed upon pursuant
30 to article five-A or article five-B, chapter thirty-eight of
31 this code by a creditor resulting from a consumer credit
32 sale or consumer loan, such consumer may petition any
33 court having jurisdiction of such matter or the circuit
34 court of the county wherein he resides to reduce or
35 temporarily or permanently remove such execution
36 upon his earnings on the grounds that such execution
37 causes or will cause undue hardship to him or his
38 family. When such fact is proved to the satisfaction of
39 such court, it may reduce or temporarily or permanently
40 remove such execution.

41 (4) No garnishment governed by the provisions of this
42 section will be given priority over a voluntary assign-
43 ment of wages to fulfill a support obligation, a garnish-
44 ment to collect arrearages in support payments, or a
45 notice of withholding from wages of amounts payable as
46 support, notwithstanding the fact that the garnishment
47 in question or the judgment upon which it is based may
48 have preceded the support-related assignment,
49 garnishment, or notice of withholding in point of time
50 or filing.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE

MAINTENANCE.

§48-2-1. Definitions.

1 (a) "Alimony" means the allowance which a person
2 pays to or in behalf of the support of his or her spouse
3 or divorced spouse while they are separated or after they
4 are divorced. The payment of alimony may be required
5 by court order or by the terms of a separation agree-
6 ment. Alimony may be paid in a lump sum or paid in
7 installments as periodic alimony. Alimony includes
8 temporary alimony as that term is used in section
9 thirteen of this article, as well as alimony as that term
10 is used in section fifteen of this article and elsewhere
11 throughout this article.

12 (b) "Antenuptial agreement" or "prenuptial agree-
13 ment" means an agreement between a man and woman
14 before marriage, but in contemplation and generally in
15 consideration of marriage, whereby the property rights
16 and interests of the prospective husband and wife, or
17 both of them, are determined, or where property is
18 secured to either or both of them, to their separate
19 estate, or to their children or other persons. An
20 antenuptial agreement may include provisions which
21 define the respective property rights of the parties
22 during the marriage, or in the event of the death of
23 either or both of the parties, and may provide for the
24 disposition of marital property upon an annulment of
25 the marriage or a divorce or separation of the parties.
26 A prenuptial agreement is void if at the time it is made:

27 (1) Either of the parties is a minor; or

28 (2) The female party to the agreement is pregnant:
29 *Provided*, That such female shall be presumed for the
30 purposes of this article to have been pregnant at the
31 time the agreement was made if she gives birth to a
32 child at any time within the nine month period next
33 following the execution of the agreement.

34 (c) "Earnings" means compensation paid or payable
35 for personal services, whether denominated as wages,
36 salary, commission, bonus, or otherwise, and includes
37 periodic payments pursuant to a pension or retirement

38 program. "Disposable earnings" means that part of the
39 earnings of any individual remaining after the deduc-
40 tion from those earnings of any amounts required by law
41 to be withheld.

42 (d) "Income" means any of the following:

43 (1) Commissions, earnings, salaries, wages, and other
44 income due or to be due in the future to an individual
45 from his employer and successor employers;

46 (2) Any payment due or to be due in the future to an
47 individual from a profit-sharing plan, a pension plan, an
48 insurance contract, an annuity, social security, unem-
49 ployment compensation, supplemental employment
50 benefits, and worker's compensation;

51 (3) Any amount of money which is owing to an
52 individual as a debt from an individual, partnership,
53 association, public or private corporation, the United
54 States or any federal agency, this state or any political
55 subdivision of this state, any other state or a political
56 subdivision of another state, or any other legal entity
57 which is indebted to the obligor.

58 (e) "Marital property" means:

59 (1) All property and earnings acquired by either
60 spouse during a marriage, including every valuable
61 right and interest, corporeal or incorporeal, tangible or
62 intangible, real or personal, regardless of the form of
63 ownership, whether legal or beneficial, whether individ-
64 ually held, held in trust by a third part, or whether held
65 by the parties to the marriage in some form of co-
66 ownership such as joint tenancy or tenancy in common,
67 joint tenancy with the right of survivorship, or any other
68 form of shared ownership recognized in other jurisdic-
69 tions without this state, except that marital property
70 shall not include separate property as defined in
71 subsection (d) of this section; and

72 (2) The amount of any increase in value in the separate
73 property of either of the parties to a marriage, which
74 increase results from (A) an expenditure of funds which
75 are marital property, including an expenditure of such
76 funds which reduces indebtedness against separate

77 property, extinguishes liens, or otherwise increases the
78 next value of separate property, or (B) work performed
79 by either or both of the parties during the marriage.

80 The definitions of "marital property" contained in this
81 subsection and "separate property" contained in subsec-
82 tion (d) of this section shall have no application outside
83 the provisions of this article, and the common law as to
84 the ownership of the respective property and earnings
85 of a husband and wife, as altered by the provisions of
86 article three of this chapter and other provisions of this
87 code, are not abrogated by implication or otherwise,
88 except as expressly provided for by the provisions of this
89 article as such provisions are applied in actions brought
90 under this article or for the enforcement of rights under
91 the article.

92 (f) "Separate property" means:

93 (1) Property acquired by a person before marriage; or

94 (2) Property acquired by a person during marriage in
95 exchange for separate property which was acquired
96 before the marriage; or

97 (3) Property acquired by a person during marriage,
98 but excluded from treatment as marital property by a
99 valid agreement of the parties entered into before or
100 during the marriage; or

101 (4) Property acquired by a party during marriage by
102 gift, bequest, devise, descent or distribution; or

103 (5) Property acquired by a party during a marriage
104 but after the separation of the parties and before the
105 granting of a divorce, annulment or decree of separate
106 maintenance; and

107 (6) Any increase in the value of separate property as
108 defined in subdivision (1), (2), (3), (4) or (5) of this
109 subsection which is due to inflation or to a change in
110 market value resulting from conditions outside the
111 control of the parties.

112 (g) "Separation" or "separation of the parties" means
113 the separation of the parties next preceding the filing
114 of an action under the provisions of this article, which

115 separation continues, without the parties cohabiting or
116 otherwise living together as husband and wife, and
117 without interruption.

118 (h) "Separation agreement" means a written agree-
119 ment entered into by a husband and wife whereby they
120 agree to live separate and apart from each other and,
121 in connection therewith, agree to settle their property
122 rights; or to provide for the custody and support of their
123 minor child or children, if any; or to provide for the
124 payment or waiver of alimony by either party to the
125 other; or to otherwise settle and compromise issues
126 arising out of their marital rights and obligations.
127 Insofar as an antenuptial agreement as defined in
128 subsection (b) of this section affects the property rights
129 of the parties or the disposition of property upon an
130 annulment of the marriage, or a divorce or separation
131 of the parties, such antenuptial agreement shall be
132 regarded as a separation agreement under the provi-
133 sions of this article.

**§48-2-13. Temporary relief during pendency of action for
divorce, annulment or separate
maintenance.**

1 (a) At the time of the filing of the complaint or at any
2 time after the commencement of an action for divorce,
3 annulment or separate maintenance under the provi-
4 sions of this article, and upon motion for temporary
5 relief, notice of hearing and hearing, the court may
6 order all or any portion of the following temporary
7 relief, which order shall govern the marital rights and
8 obligations of the parties during the pendency of the
9 action:

10 (1) The court may require either party to pay
11 temporary alimony in the form of periodic installments,
12 or a lump sum, or both, for the maintenance of the other
13 party.

14 (2) The court may provide for the custody of minor
15 children of the parties subject to such rights of
16 visitation, both in and out of the residence of the
17 custodial parent or other person or persons having
18 custody, as may be appropriate under the

19 circumstances.

20 (3) The court may require either party to pay
21 temporary child support in the form of periodic
22 installments for the maintenance of the minor children
23 of the parties.

24 (4) The court may compel either party to pay attor-
25 ney's fees and court costs reasonably necessary to enable
26 the other party to prosecute or defend the action in the
27 trial court. The question of whether or not a party is
28 entitled to temporary alimony shall not be decisive of
29 that party's right to a reasonable allowance of attorney's
30 fees and court costs. An order for temporary relief
31 awarding attorney fees and court costs may be modified
32 at any time during the pendency of the action, as the
33 exigencies of the case or equity and justice may require,
34 including, but not limited to, a modification which
35 would require full or partial repayment of fees and costs
36 by a party to the action to whom or on whose behalf
37 payment of such fees and costs was previously ordered.
38 If an appeal be taken or an intention to appeal be stated,
39 the court may further order either party to pay attorney
40 fees and costs on appeal.

41 (5) As an incident to requiring the payment of
42 temporary alimony or temporary child support, the
43 court may order either party to continue in effect
44 existing policies of insurance covering the costs of health
45 care and hospitalization of the other party and the minor
46 children of the parties. If there is no such existing policy
47 or policies, the court shall order that such health care
48 insurance coverage be paid for by the noncustodial
49 parent, if the court determines that such health care
50 coverage is available to the noncustodial parent at a
51 reasonable cost. Payments made to an insurer pursuant
52 to this subdivision, either directly or by a deduction
53 from wages, shall be deemed to be temporary alimony
54 or temporary child support, in such proportion as the
55 court shall direct: *Provided*, That if the court does not
56 set forth in the order that a portion of such payments
57 is to be deemed temporary child support, then all such
58 payments made pursuant to this subdivision shall be
59 deemed to be temporary alimony.

60 (6) As an incident to requiring the payment of
61 temporary alimony or temporary child support, the
62 court may grant the exclusive use and occupancy of the
63 marital home to one of the parties during the pendency
64 of the action, together with all or a portion of the
65 household goods, furniture and furnishings, reasonably
66 necessary for such use and occupancy. The court may
67 require payments to third parties in the form of home
68 loan installments, land contract payments, rent, pay-
69 ments for utility services, property taxes, insurance
70 coverage or other expenses or charges reasonably
71 necessary for the use and occupancy of the marital
72 domicile. Payments made to a third party pursuant to
73 this subdivision shall be deemed to be temporary
74 alimony or temporary child support, in such proportion
75 as the court shall direct: *Provided*, That if the court does
76 not set forth in the order that a portion of such payments
77 is to be deemed temporary child support, then all such
78 payments made pursuant to this subdivision shall be
79 deemed to be temporary alimony: *Provided, however*,
80 That the court may order such payments to be made
81 without denominating them either as temporary alim-
82 ony or temporary child support, reserving such decision
83 until such time as the court determines the interests of
84 the parties in marital property and equitably divides the
85 same: *Provided further*, That at the time the court
86 determines the interests of the parties in marital
87 property and equitably divides the same, the court may
88 consider the extent to which payments made to third
89 parties under the provisions of this subdivision have
90 affected the rights of the parties in marital property,
91 and may treat such payments as a partial distribution
92 of marital property notwithstanding the fact that such
93 payments have been denominated temporary alimony or
94 temporary child support or not so denominated under
95 the provisions of this subdivision. Nothing contained in
96 this subdivision shall abrogate an existing contract
97 between either of the parties and a third party, or affect
98 the rights and liabilities of either party or a third party
99 under the terms of such contract.

100 (7) As an incident to requiring the payments of
101 temporary alimony, the court may grant the exclusive

102 use and possession of one or more motor vehicles to
103 either of the parties during the pendency of the action.
104 The court may require payments to third parties in the
105 form of automobile loan installments or insurance
106 coverage, and any such payments made pursuant to this
107 subdivision shall be deemed to be temporary alimony:
108 *Provided*, That the court may order such payments to
109 be made without denominating them as temporary
110 alimony, reserving such decision until such time as the
111 court determines the interests of the parties in marital
112 property and equitably divides the same: *Provided*,
113 *however*, That at the time the court determines the
114 interests of the parties in marital property and equit-
115 ably divides the same, the court may consider the extent
116 to which payments made to third parties under the
117 provisions of this subdivision have affected the rights of
118 the parties in marital property, and may treat such
119 payments as a partial distribution of marital property
120 notwithstanding the fact that such payments have been
121 denominated temporary alimony or not so denominated
122 under the provisions of this subdivision. Nothing
123 contained in this subdivision shall abrogate an existing
124 contract between either of the parties and a third party,
125 or affect the rights and liabilities of either party or a
126 third party under the terms of such contract.

127 (8) Where the pleadings include a specific request for
128 specific property or raise issues concerning the equita-
129 ble division of marital property, the court may enter
130 such order as is reasonably necessary to preserve the
131 estate of either or both of the parties, including the
132 imposition of a constructive trust, so that such property
133 be forthcoming to meet any order which may be made
134 in the action, and may compel either party to give
135 security to abide such order, or may require the
136 property in question to be delivered into the temporary
137 custody of a third party. The court may further order
138 either or both of the parties to pay the costs and
139 expenses of maintaining and preserving the property of
140 the parties during the pendency of the action: *Provided*,
141 That at the time the court determines the interest of the
142 parties in marital property and equitably divides the
143 same, the court may consider the extent to which

144 payments made for the maintenance and preservation of
145 property under the provisions of this subdivision have
146 affected the rights of the parties in marital property,
147 and may treat such payments as a partial distribution
148 of marital property. When appropriate, the court may
149 release all or any part of such protected property for
150 sale and substitute all or a portion of the proceeds of the
151 sale for such property.

152 (9) Unless a contrary disposition be found appropriate
153 and ordered pursuant to other provisions of this section,
154 then upon the motion of either party, the court may
155 compel the other party to deliver to the movant party
156 any of his or her separate estate which may be in the
157 possession or control of the respondent party, and may
158 make such further order as is necessary to prevent
159 either party from interfering with the separate estate
160 of the other.

161 (10) The court may enjoin either party from molesting
162 or interfering with the other, or otherwise imposing any
163 restraint on the personal liberty of the other, or
164 interfering with the custodial or visitation rights of the
165 other.

166 (b) In ordering temporary relief under the provisions
167 of this section, the court shall consider the financial
168 needs of the parties, the present employment income and
169 other recurring earnings of each party from any source,
170 their income-earning abilities, and the respective legal
171 obligations of each party to support himself or herself
172 and to support any other persons. Except in extraordi-
173 nary cases supported by specific findings set forth in the
174 order granting relief, payments of temporary alimony
175 and temporary child support are to be made from a
176 party's employment income and other recurring earn-
177 ings, and not from the corpus of a party's separate
178 estate, and an award of such relief shall not be
179 disproportionate to a party's ability to pay as disclosed
180 by the evidence before the court.

181 (c) At any time after a party is abandoned or deserted
182 or after the parties to a marriage have lived separate
183 and apart in separate places of abode without any

184 cohabitation, the party abandoned or either party living
185 separate and apart may apply for relief pursuant to this
186 section by instituting an action for divorce as provided
187 in section ten of this article, alleging that the plaintiff
188 reasonably believes that the period of abandonment or
189 of living separate and apart will continue for the period
190 prescribed by the applicable provisions of section four
191 of this article. If the period of abandonment or living
192 separate and apart continues for the period prescribed
193 by the applicable provisions of section four of this
194 article, the divorce action may proceed to a hearing as
195 provided in sections twenty-four and twenty-five of this
196 article without a new complaint being filed: *Provided*,
197 That the party desiring to proceed to a hearing shall
198 give the opposing party at least twenty days' notice of
199 the time, place and purpose of the hearing, unless the
200 opposing party shall have filed with the court a waiver
201 of notice of further proceedings, signed by such opposing
202 party. If such notice is required to be served, it shall
203 be served in the same manner as a complaint, regardless
204 of whether the opposing party has appeared or
205 answered.

206 (d) To facilitate the resolution of issues arising at a
207 hearing for temporary relief, the court may, or upon the
208 motion of either party shall, order each of the parties
209 to file with the court, and serve on the other party, a
210 sworn statement of each party's assets, liabilities and
211 employment income and other earnings from any
212 source. The statement shall be in such form and contain
213 such detailed information as the court may prescribe by
214 general order. In addition, the court may, or upon the
215 motion of either party shall, order the parties to comply
216 with the disclosure requirements set forth in section
217 thirty-three of this article, and, if necessary, continue
218 the hearing for temporary relief from time to time to
219 afford the parties an opportunity to obtain and provide
220 such information.

221 (e) An ex parte order granting all or part of the relief
222 provided for in this section may be granted without
223 written or oral notice to the adverse party if:

224 (1) It appears from specific facts shown by affidavit

225 or by the verified complaint that immediate and
226 irreparable injury, loss or damage will result to the
227 applicant before the adverse party or such party's
228 attorney can be heard in opposition. Such potential
229 injury, loss or damage may be anticipated when the
230 following conditions exist: *Provided*, That the following
231 list of conditions shall not be exclusive:

232 (A) There is a real and present threat of physical
233 injury to the applicant at the hands or direction of the
234 adverse party;

235 (B) The adverse party is preparing to quit the state
236 with a minor child or children of the parties, thus
237 depriving the court of jurisdiction in the matter of child
238 custody;

239 (C) The adverse party is preparing to remove property
240 from the state, or is preparing to transfer, convey,
241 alienate, encumber or otherwise deal with property
242 which could otherwise be subject to the jurisdiction of
243 the court and subject to judicial order under the
244 provisions of this section or section fifteen of this article;

245 And,

246 (2) The movant party or his or her attorney certifies
247 in writing the efforts, if any, which have been made to
248 give the notice, and the reasons supporting his claim
249 that notice should not be required.

250 (f) Every ex parte order granted without notice shall
251 be endorsed with the date and hour of issuance; shall
252 be filed forthwith in the circuit clerk's office and
253 entered of record; and shall set forth the finding of the
254 court that unless the order is granted without notice
255 there is probable cause to believe that existing condi-
256 tions will result in immediate and irreparable injury,
257 loss or damage to the movant party before the adverse
258 party or his or her attorney can be heard in opposition.
259 The order granting ex parte relief shall fix a time for
260 a hearing for temporary relief to be held within a
261 reasonable time, not to exceed twenty days, unless
262 before the time so fixed for hearing, such hearing is
263 continued for good cause shown or with the consent of

264 the party against whom the ex parte order is directed.
265 The reasons for the continuance shall be entered of
266 record. Within the time limits described herein, when
267 an ex parte order is made, a motion for temporary relief
268 shall be set down for hearing at the earliest possible
269 time and shall take precedence of all matters except
270 older matters of the same character. If the party who
271 obtained the ex parte order fails to proceed with a
272 motion for temporary relief, the court shall set aside the
273 ex parte order. At any time after ex parte relief is
274 granted, and on two days' notice to the party who
275 obtained such relief or on such shorter notice as the
276 court may direct, the adverse party may appear and
277 move the court to set aside or modify the ex parte order,
278 on the grounds that the effects of such order are onerous
279 or otherwise improper. In such event, the court shall
280 proceed to hear and determine such motion as expedi-
281 tiously as the ends of justice require.

**§48-2-15. Relief upon ordering divorce or annulment or
granting decree of separate maintenance.**

1 (a) Upon ordering a divorce or granting a decree of
2 separate maintenance, the court may require either
3 party to pay alimony in the form of periodic instal-
4 ments, or a lump sum, or both, for the maintenance of
5 the other party. Payments of alimony and child support
6 are to be ordinarily made from a party's employment
7 income and other recurring earnings, but in cases where
8 the employment income and other recurring earnings
9 are not sufficient to adequately provide for payments of
10 alimony and child support, the court may, upon specific
11 findings set forth in the order, order the party required
12 to make such payments to make the same from the
13 corpus of his or her separate estate. An award of such
14 relief shall not be disproportionate to a party's ability
15 to pay as disclosed by the evidence before the court.

16 (b) Upon ordering the annulment of a marriage or a
17 divorce or granting of decree of separate maintenance,
18 the court may further order all or any part of the
19 following relief:

20 (1) The court may provide for the custody of minor

21 children of the parties, subject to such rights of
22 visitation, both in and out of the residence of the
23 custodial parent or other person or persons having
24 custody, as may be appropriate under the
25 circumstances. In addition, the court may, in its
26 discretion, make such further order as it shall deem
27 expedient, concerning the grant of reasonable visitation
28 rights to any grandparent or grandparents of the minor
29 children upon application, if the grandparent or
30 grandparents are related to such minor child through
31 a party:

32 (A) Whose whereabouts are unknown, or

33 (B) Who did not answer or otherwise appear and
34 defend the cause of action.

35 (2) The court may require either party to pay child
36 support in the form of periodic installments for the
37 maintenance of the minor children of the parties.

38 (3) As an incident to requiring the payment of alimony
39 or child support, the court may order either party to
40 continue in effect existing policies of insurance covering
41 the costs of health care and hospitalization of the other
42 party and the minor children of the parties: *Provided*,
43 That if the other party is no longer eligible to be covered
44 by such insurance because of the granting of an
45 annulment or divorce, the court may require a party to
46 substitute such insurance with a new policy to cover the
47 other party, or may consider the prospective cost of such
48 insurance in awarding alimony to be paid in periodic
49 installments. If there is no such existing policy or
50 policies, the court shall order such health care insurance
51 coverage to be paid for by the noncustodial parent, if
52 the court determines that such health care insurance
53 coverage is available to the noncustodial parent at a
54 reasonable cost. Payments made to an insurer pursuant
55 to this subdivision, either directly or by a deduction
56 from wages, shall be deemed to be alimony, child
57 support or installment payments for the distribution of
58 marital property, in such proportion as the court shall
59 direct: *Provided*, That if the court does not set forth in
60 the order that a portion of such payments is to be

61 deemed child support or installment payments for the
62 distribution of marital property, then all such payments
63 made pursuant to this subdivision shall be deemed to be
64 alimony: *Provided however*, That the designation of
65 insurance coverage as alimony under the provisions of
66 this subdivision shall not, in and of itself, give rise to
67 a subsequent modification of the order to provide for
68 alimony other than insurance for covering the costs of
69 health care and hospitalization.

70 (4) As an incident to requiring the payment of alimony
71 or child support, the court may grant the exclusive use
72 and occupancy of the marital home to one of the parties,
73 together with all or a portion of the household goods,
74 furniture and furnishings reasonably necessary for
75 such use and occupancy. Such use and occupancy shall
76 be for a definite period, ending at a specific time set
77 forth in the order, subject to modification upon the
78 petition of either party. Except in extraordinary cases
79 supported by specific findings set forth in the order
80 granting relief, a grant of the exclusive use and
81 occupancy of the marital home shall be limited to those
82 situations where such use and occupancy is reasonably
83 necessary to accommodate the rearing of minor children
84 of the parties. The court may require payments to third
85 parties in the form of home loan installments, land
86 contract payments, rent, payments for utility services,
87 property taxes, insurance coverage, or other expenses or
88 charges reasonably necessary for the use and occu-
89 pancy of the marital domicile. Payments made to a third
90 party pursuant to this subdivision for the benefit of the
91 other party shall be deemed to be alimony, child support
92 or installment payments for the distribution of marital
93 property, in such proportion as the court shall direct:
94 *Provided*, That if the court does not set forth in the order
95 that a portion of such payments is to be deemed child
96 support or installment payments for the distribution of
97 marital property, then all such payments made
98 pursuant to this subdivision shall be deemed to be
99 alimony. Nothing contained in this subdivision shall
100 abrogate an existing contract between either of the
101 parties and a third party, or affect the rights and
102 liabilities of either party or a third party under the

103 terms of such contract.

104 (5) As an incident to requiring the payment of
105 alimony, the court may grant the exclusive use and
106 possession of one or more motor vehicles to either of the
107 parties. The court may require payments to third
108 parties in the form of automobile loan installments or
109 insurance coverage, and any such payments made
110 pursuant to this subdivision for the benefit of the other
111 party shall be deemed to be alimony or installment
112 payments for the distribution of marital property, as the
113 court may direct. Nothing contained in this subsection
114 shall abrogate an existing contract between either of the
115 parties and a third party, or affect the rights and
116 liabilities of either party or a third party under the
117 terms of such contract.

118 (6) Where the pleadings include a specific request for
119 specific property or raise issues concerning the equita-
120 ble division of marital property as defined in section one
121 of this article, the court shall order such relief as may
122 be required to effect a just and equitable distribution
123 of the property and to protect the equitable interests of
124 the parties therein.

125 (7) Unless a contrary disposition be found appropriate
126 and ordered pursuant to other provisions of this section,
127 then upon the motion of either party, the court may
128 compel the other party to deliver to the movant party
129 any of his or her separate estate which may be in the
130 possession or control of the respondent party, and may
131 make such further order as is necessary to prevent
132 either party from interfering with the separate estate
133 of the other.

134 (8) The court may enjoin either party from the
135 molesting or interfering with the other, or otherwise
136 imposing any restraint on the personal liberty of the
137 other, or interfering with the custodial or visitation
138 rights of the other.

139 (9) The court may order either party to take necessary
140 step to transfer utility accounts and other accounts for
141 recurring expenses from the name of one party into the
142 name of the other party or from the joint names of the

143 parties into the name of one party. Nothing contained
144 in this subdivision shall affect the liability of the parties
145 for indebtedness on any such account incurred before
146 the transfer of such account.

147 (c) In any case where an annulment or divorce is
148 denied, the court shall retain jurisdiction of the case and
149 may order all or any portion of the relief provided for
150 in subsections (a) and (b) of this section which has been
151 demanded or prayed for in the pleadings.

152 (d) In any case where a divorce or annulment is
153 granted in this state upon constructive service of
154 process, and personal jurisdiction is thereafter obtained
155 of the defendant in such case, the court may order all
156 or any portion of the relief provided for in subsections
157 (a) and (b) of this section which has been demanded or
158 prayed for in the pleadings.

159 (e) At any time after the entry of an order pursuant
160 to the provisions of this section, the court may, upon the
161 verified petition of either of the parties, revise or alter
162 such order concerning the maintenance of the parties,
163 or either of them, and make a new order concerning the
164 same, as the altered circumstances or needs of the
165 parties may render necessary to meet the ends of justice;
166 and the court may also from time to time afterward, on
167 the verified petition of either of the parties or other
168 proper person having actual or legal custody of the
169 minor child or children of the parties, revise or alter
170 such order concerning the custody and maintenance of
171 the children, and make a new order concerning the
172 same, as the circumstances of the parents or other
173 proper person or persons and the benefit of the children
174 may require. In granting such relief, the court may,
175 where other means are not conveniently available, alter
176 any prior order of the court with respect to the
177 distribution of marital property, if such property is still
178 held by the parties, and if necessary to give effect to a
179 modification of alimony, child support or child custody
180 or necessary to avoid an inequitable or unjust result
181 which would be caused by the manner in which the
182 modification will affect the prior distribution of marital
183 property.

184 (f) In every case where a separation agreement is the
185 basis for an award of alimony, the court, in approving
186 the agreement, shall examine the agreement to ascer-
187 tain whether it clearly provides for alimony to continue
188 beyond the death of the payor party or to cease in such
189 event. Where alimony is to be paid pursuant to the terms
190 of a separation agreement which does not state whether
191 the payment of alimony is to continue beyond the death
192 of the payor party or is to cease, or where the parties
193 have not entered into a separation agreement and
194 alimony is to be awarded, the court shall specifically
195 state as a part of its order whether such payments of
196 alimony are to be continued beyond the death of the
197 payor party or cease.

198 (g) In every case where a separation agreement is the
199 basis for an award of alimony, the court, in approving
200 the agreement, shall examine the agreement to ascer-
201 tain whether it clearly provides for alimony to continue
202 beyond the remarriage of the payee party or to cease in
203 such event. Where alimony is to be paid pursuant to the
204 terms of a separation agreement which does not state
205 whether the payment of alimony is to continue beyond
206 the remarriage of the payee party or is to cease, or
207 where the parties have not entered into a separation
208 agreement and alimony is to be awarded, the court shall
209 specifically state as a part of its order whether such
210 payments of alimony are to be continued beyond the
211 remarriage of the payee party or cease.

212 (h) In addition to the statement provided for in
213 subsection (d), section thirteen of this article and in
214 addition or in lieu of the disclosure requirements set
215 forth in section thirty-three of this article, the court may
216 order accounts to be taken as to all or any part of
217 marital property or the separate estates of the parties,
218 and may direct that the accounts be taken as of the date
219 of the marriage, the date upon which the parties
220 separated, or any other time deemed to be appropriate
221 in assisting the court in the determination and equitable
222 division of property.

223 (i) In determining whether alimony is to be awarded,
224 or in determining the amount of alimony, if any, to be

225 awarded under the provisions of this section, the court
226 shall consider and compare the fault or misconduct of
227 either or both of the parties and the effect of such fault
228 or misconduct as a contributing factor to the deteriora-
229 tion of the marital relationship. However, alimony shall
230 not be awarded in any case where both parties prove
231 grounds for divorce and are denied a divorce, nor shall
232 an award of alimony under the provisions of this section
233 be ordered which directs the payment of alimony to a
234 party determined to be at fault, when, as a grounds
235 granting the divorce, such party is determined by the
236 court:

237 (1) To have committed adultery; or

238 (2) To have been convicted for the commission of a
239 crime which is a felony, subsequent to the marriage, if
240 such conviction has become final; or

241 (3) To have actually abandoned or deserted his or her
242 spouse for six months.

243 (j) Whenever under the terms of this section or section
244 thirteen of this article a court enters an order requiring
245 the payment of alimony or child support, if the court
246 anticipates the payment of such alimony or child
247 support or any portion thereof to be paid out of
248 "disposable retired or retainer pay" as that term is
249 defined in 10 U.S.C. Sec. 1408, relating to members or
250 former members of the uniformed services of the United
251 States, the court shall specifically provide for the
252 payment of an amount, expressed in dollars or as a
253 percentage of disposable retired or retainer pay, from
254 the disposable retired or retainer pay of the payor party
255 to the payee party.

§48-2-15a. Withholding from income.

1 (a) On and after the effective date of this section, every
2 order entered or modified under the provisions of this
3 article which requires the payment of child support or
4 spousal support shall include a provision for automatic
5 withholding from income of the obligor if arrearages in
6 such support occur, in order to facilitate income
7 withholding as a means of collecting support when such

8 arrearages occur.

9 (b) Every such order as described in subsection (a)
10 above shall contain language authorizing income
11 withholding to commence without further court action:

12 (1) When the support payments required by such
13 order are thirty days or more in arrears if the order
14 requires payments to be made in monthly installments;

15 (2) When the support payments required by such
16 order are twenty-eight days or more in arrears if the
17 order requires payments to be paid in weekly or bi-
18 weekly installments; or

19 (3) When the obligor requests the child advocate office
20 to commence income withholding.

21 (c) For the purposes of this section, the number of days
22 support payments are in arrears shall be considered to
23 be the total cumulative number of days during which
24 payments required by a court order have been delin-
25 quent, whether or not such days are consecutive.

26 (d) The supreme court of appeals shall make available
27 to the circuit courts standard language to be included
28 in all such orders, so as to conform such orders to the
29 applicable requirements of state and federal law
30 regarding the withholding from income of amounts
31 payable as support.

32 (e) Every support order entered by a circuit court of
33 this state prior to the effective date of this section shall
34 be considered to provide for an order of income
35 withholding by operation of law, notwithstanding the
36 fact that such support order does not in fact provide for
37 an order of withholding.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

ARTICLE 1. GENERAL PROVISIONS.

§48A-1-1. Short title.

1 This chapter shall be known and cited as the "Family
2 Obligations Enforcement Act."

§48A-1-2. Statement of purpose and intent.

1 It is the purpose of the Legislature in enacting this
2 chapter to improve and facilitate support enforcement
3 efforts in this state, with the primary goal being to
4 establish and enforce reasonable child support orders
5 and thereby improve opportunities for children. It is the
6 intent of the Legislature that to the extent practicable,
7 the laws of this state should encourage and require a
8 child's parents to meet the obligation of providing that
9 child with adequate food, shelter, clothing, education,
10 and health and child care.

§48A-1-3. Definitions.

1 As used in this chapter:

2 (1) "Automatic data processing and retrieval system"
3 means a computerized data processing system designed
4 to do the following:

5 (A) To control, account for, and monitor all of the
6 factors in the support enforcement collection and
7 paternity determination process, including but not
8 limited to:

9 (i) Identifiable correlation factors (such as social
10 security numbers, names, dates of birth, home addresses
11 and mailing addresses of any individual with respect to
12 whom support obligations are sought to be established
13 or enforced and with respect to any person to whom such
14 support obligations are owing) to assure sufficient
15 compatibility among the systems of different jurisdic-
16 tions to permit periodic screenings to determine
17 whether such individual is paying or is obligated to pay
18 support in more than one jurisdiction;

19 (ii) Checking of records of such individuals on a
20 periodic basis with federal, interstate, intrastate, and
21 local agencies;

22 (iii) Maintaining the data necessary to meet applicable
23 federal reporting requirements on a timely basis; and

24 (iv) Delinquency and enforcement activities;

25 (B) To control, account for, and monitor the collection

26 and distribution of support payments (both interstate
27 and intrastate), the determination, collection and
28 distribution of incentive payments (both interstate and
29 intrastate), and the maintenance of accounts receivable
30 on all amounts owed, collected and distributed; and

31 (C) To control, account for, and monitor the costs of
32 all services rendered, either directly or by exchanging
33 information with state agencies responsible for main-
34 taining financial management and expenditure
35 information;

36 (D) To provide access to the records of the department
37 of human services for aid to families with dependent
38 children in order to determine if a collection of a support
39 payment causes a change affecting eligibility for or the
40 amount of aid under such program;

41 (E) To provide for security against unauthorized
42 access to, or use of, the data in such system;

43 (F) To facilitate the development and improvement of
44 the income withholding and other procedures designed
45 to improve the effectiveness of support enforcement
46 through the monitoring of support payments, the
47 maintenance of accurate records regarding the payment
48 of support, and the prompt provision of notice to
49 appropriate officials with respect to any arrearages in
50 support payments which may occur; and

51 (G) To provide management information on all cases
52 from initial referral or application through collection
53 and enforcement.

54 (2) "Chief judge" means the following:

55 (A) The circuit judge in a judicial circuit having only
56 one circuit judge, except for the twenty-third and thirty-
57 first judicial circuits;

58 (B) In the twenty-third and thirty-first judicial
59 circuits, a chief judge designated by the judges thereof
60 from among themselves by general order, to act as chief
61 judge for both circuits for the purposes of this chapter:
62 *Provided*, That if the judges cannot agree as to who shall
63 act as chief judge, then a chief judge shall be designated

64 for the purposes of this chapter by the supreme court
65 of appeals; or

66 (C) The chief judge of the circuit court in a judicial
67 circuit having two or more circuit judges.

68 (3) "Child advocate office" means the office within the
69 department of human services created under the
70 provisions of article two of this chapter, intended by the
71 Legislature to be the single and separate organizational
72 unit of state government administering programs of
73 child and spousal support enforcement and meeting the
74 staffing and organizational requirements of the
75 secretary of the federal department of health and
76 human services.

77 (4) "Childrens' advocate" or "advocate" means a person
78 appointed to such position under the provisions of
79 section two, article three of this chapter.

80 (5) "Court" means a circuit court of this state, unless
81 the context in which such term is used clearly indicates
82 that reference to some other court is intended. For the
83 purposes of this chapter, the circuit courts of the twenty-
84 third and thirty-first judicial circuits shall be consi-
85 dered as being in a single judicial circuit.

86 (6) "Court of competent jurisdiction" means a circuit
87 court within this state, or a court or administrative
88 agency of another state having jurisdiction and due legal
89 authority to deal with the subject matter of the
90 establishment and enforcement of support obligations.
91 Whenever in this chapter reference is made to an order
92 of a court of competent jurisdiction, or similar wording,
93 such language shall be interpreted so as to include
94 orders of an administrative agency entered in a state
95 where enforceable orders may by law be properly made
96 and entered by such administrative agency.

97 (7) "Custodial parent" or "custodial parent of a child"
98 means a parent who has been granted custody of a child
99 by a court of competent jurisdiction. "Noncustodial
100 parent" means a parent of a child with respect to whom
101 custody has been adjudicated with the result that such
102 parent has not been granted custody of the child.

103 (8) "Domestic relations matter" means any circuit
104 court proceeding involving child custody, child visita-
105 tion, child support or alimony.

106 (9) "Earnings" means compensation paid or payable
107 for personal services, whether denominated as wages,
108 salary, commission, bonus, or otherwise, and includes
109 periodic payments pursuant to a pension or retirement
110 program. "Disposable earnings" means that part of the
111 earnings of any individual remaining after the deduc-
112 tion from those earnings of any amounts required by law
113 to be withheld.

114 (10) "Employer" means any individual, sole proprie-
115 torship, partnership, association, public or private
116 corporation, the United States or any federal agency,
117 this state or any political subdivision of this state, any
118 other state or political subdivision of another state, and
119 any other legal entity which hires and pays an individ-
120 ual for his services.

121 (11) "Guardian of the property of a child" means a
122 person lawfull invested with the power, and charged
123 with the duty, of managing and controlling the estate
124 of a child.

125 (12) "Income" means any of the following:

126 (A) Commissions, earnings, salaries, wages, and other
127 income due or to be due in the future to an obligor from
128 his employer and successor employers;

129 (B) Any payment due or to be due in the future to an
130 obligor from a profit-sharing plan, a pension plan, an
131 insurance contract, an annuity, social security, unem-
132 ployment compensation, supplemental employment
133 benefits, and worker's compensation;

134 (C) Any amount of money which is owing to the
135 obligor as a debt from an individual, partnership,
136 association, public or private corporation, the United
137 States or any federal agency, this state or any political
138 subdivision of this state, any other state or a political
139 subdivision of another state, or any other legal entity
140 which is indebted to the obligor.

141 (13) "Individual entitled to support enforcement
142 services under the provisions of this chapter" means:

143 (A) An individual who has applied for or is receiving
144 services from the child advocate office and who is the
145 custodial parent of a child, or the primary caretaker of
146 a child, or the guardian of the property of a child when:

147 (i) Such child has a parent and child relationship with
148 an obligor who is not such custodial parent, primary
149 caretaker or guardian; and

150 (ii) The obligor with whom the child has a parent and
151 child relationship is not meeting an obligation to support
152 the child, or has not met such obligation in the past; or

153 (B) An individual who has applied for or is receiving
154 services from the child advocate office and who is an
155 adult or an emancipated minor whose spouse or former
156 spouse has been ordered by a court of competent
157 jurisdiction to pay spousal support to the individual,
158 whether such support is denominated alimony or
159 separate maintenance, or is identified by some other
160 terminology, thus establishing a support obligation with
161 respect to such spouse, when the obligor required to pay
162 such spousal support is not meeting the obligation, or
163 has not met such obligation in the past.

164 (14) "Master" or "family law master" means a person
165 appointed to such position under the provisions of
166 section one, article four of this chapter.

167 (15) "Obligee" means an individual to whom a duty of
168 support is owed, or the state of West Virginia or the
169 department of human services, if support has been
170 assigned to the state or department.

171 (16) "Obligor" means a person who owes a legal duty
172 to support another person.

173 (17) "Office of the childrens' advocate" means the
174 office created in section two, article three of this
175 chapter.

176 (18) "Primary caretaker of a child" means a parent or
177 other person having actual physical custody of a child
178 without a court order granting such custody, and who

179 has been primarily responsible for exercising parental
180 rights and responsibilities with regard to such child.

181 (19) "Source of income" means an employer or
182 successor employer of any other person who owes or will
183 owe income to an obligor.

184 (20) "Support" means the payment of money:

185 (A) For a child or spouse, ordered by a court of
186 competent jurisdiction, whether the payment is ordered
187 in an emergency, temporary, permanent or modified
188 order, decree or judgment of such court;

189 (B) To third parties on behalf of a child or spouse,
190 including, but not limited to, payments to medical,
191 dental, or educational providers, payments to insurers
192 for health and hospitalization insurance, payments of
193 residential rent or mortgage payments, payments on an
194 automobile, or payments for day care; and/or

195 (C) For a mother, ordered by a court of competent
196 jurisdiction, for the necessary expenses incurred by or
197 for the mother in connection with her confinement or of
198 other expenses in connection with the pregnancy of the
199 mother.

200 (21) "Support order" means any order of a court of
201 competent jurisdiction for the payment of support,
202 whether or not for a sum certain.

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48A-2-1. West Virginia child advocate office established.

1 (a) There is hereby established within the department
2 of human services the child advocate office.

3 (b) The child advocate office shall be terminated
4 pursuant to the provisions of article ten, chapter four of
5 this code on the first day of July, one thousand nine
6 hundred ninety unless sooner terminated or unless
7 continued or reestablished pursuant to such article and
8 chapter.

§48A-2-2. Legislative purpose and intent; responsibility of the child advocate office.

1 (a) This article is enacted for the purpose of creating
2 a child advocate office which will focus on the vital
3 issues of child support, spousal support, child custody,
4 visitation rights, and other related family law issues
5 involving the well-being of children, inasmuch as such
6 issues are properly within the jurisdiction of the state
7 of West Virginia. The legislature of the state of West
8 Virginia, in creating the child advocate office, recog-
9 nizes the seriousness of family law issues as they affect
10 the health and welfare of the children of this state. The
11 legislature intends, by the enactment of this article and
12 through the creation of this office, to specifically assign
13 the highest priority to these issues. It is the sense of the
14 legislature that there must be a state office which, as
15 its primary function, protects and promotes the best
16 interests of children; which recognizes the rights and
17 obligations of all persons involved in family law issues;
18 and which has the authority and the means to resolve
19 family law issues fairly and efficiently. Through the
20 establishment of the child advocate office the legislature
21 intends to create an impetus and a mechanism for
22 dealing with the varied problems associated with
23 support enforcement, thereby enhancing the health and
24 welfare of our state's children and their families.

25 (b) In order to carry out the purposes and intent of
26 the legislature, the child advocate office shall have, as
27 its primary responsibilities, the following:

28 (1) The offering of mediation and counseling to
29 parents so as to resolve family law issues which affect
30 the well-being of children;

31 (2) The enforcement of support obligations owed by a
32 parent to his or her child or children;

33 (3) The enforcement of support obligations owed by an
34 individual to his or her spouse or former spouse;

35 (4) Locating parents or spouses who owe a duty to pay
36 support;

37 (5) Establishing paternity on behalf of minors whose
38 paternal parentage has not been acknowledged by the
39 father or otherwise established by law;

40 (6) Obtaining court orders for child and spousal
41 support;

42 (7) Enforcing orders which establish the rights of
43 parents as to custody and visitation; and

44 (6) Assuring that the assistance and services of the
45 office required to be provided under the provisions of
46 this chapter will be available to all individuals for whom
47 such assistance is required or requested.

**§48A-2-3. Acceptance of federal purposes; compliance
with federal requirements and standards.**

1 (a) The state assents to the purposes of the federal
2 laws regarding child support and establishment of
3 paternity and agrees to accept federal appropriations
4 and other forms of assistance made under or pursuant
5 thereto, and authorizes the receipt of such appropria-
6 tions into the state treasury and the receipt of other
7 forms of assistance by the child advocate office for
8 expenditure, disbursement, and distribution by the
9 office in accordance with the provisions of this chapter
10 and the conditions imposed by applicable federal laws,
11 rules, and regulations.

12 (b) Insofar as such actions are consistent with the laws
13 of this state granting authority to the child advocate
14 office and the director, the office shall comply with such
15 requirements and standards as the secretary of the
16 federal department of health and human services may
17 have determined, as of the effective date of this section,
18 to be necessary for the establishment of an effective
19 program for locating obligors, establishing paternity,
20 obtaining support orders, and collecting support
payments.

**§48A-2-4. Director; appointment; qualifications; oath of
office; director not to hold other office or
engage in political activity.**

1 (a) There shall be a director of the child advocate
2 office who shall be appointed by the commissioner of the
3 department of human services. The salary of the
4 director shall be set by the commissioner and be paid
5 with funds of the office. The director shall be allowed

6 and paid necessary expenses incident to the
7 performance of his or her official duties.

8 (b) The director shall be selected with special refer-
9 ence and consideration given to his or her training,
10 experience, capacity and interest in or relating to the
11 child and spousal support enforcement programs
12 administered by the child advocate office.

13 (c) Before entering upon the duties of his or her office,
14 the director shall take and subscribe to the oath of office
15 prescribed by section five, article IV of the West
16 Virginia Constitution, and shall execute a corporate
17 surety bond in the sum of fifteen thousand dollars for
18 the faithful performance of his or her duties. The bond
19 shall be in the form prescribed by the attorney general
20 and approved by the governor, and both the certificate
21 of the oath and the bond shall be filed with the secretary
22 of state. Premiums upon the bond shall be paid out of
23 the funds of the child advocate office.

24 (d) The director shall not be a candidate for, or hold,
25 any other public office or public employment under the
26 federal government, or the government of this state or
27 any of its political subdivisions, or be a member or
28 officer of any political party committee, or serve as an
29 election official, or engage in any political activity, other
30 than to vote, in behalf of, or in opposition to, any
31 candidate, or political party in an election. Any violation
32 by the director of the provisions of this paragraph shall
33 be cause for removal from office.

**§48A-2-5. Functions and responsibilities of the office of
child support enforcement continued in the
child advocate office.**

1 All functions and responsibilities of the office of child
2 support enforcement within the department of human
3 services are hereby continued and vested in the child
4 advocate office created under the provisions of this
5 article.

§48A-2-6. Organization of the child advocate office.

1 (a) Within limits of state appropriations and federal
2 grants and subject to provisions of state and federal

3 laws, rules and regulations, the director shall organize
4 the office into appropriate administrative units which
5 shall be operationally and functionally distinct and
6 separate from any other units or programs of the
7 department of human services so that employees of the
8 office shall not be required to perform functions or
9 duties of the department which are outside the scope of
10 activities of the child advocate office as defined in this
11 chapter. Consistent with the requirements of article six,
12 chapter twenty-nine of this code, the director shall
13 appoint and employ for the office such assistants and
14 employees, as may in his or her judgment be necessary
15 or desirable to carry out fully and in an orderly, efficient
16 and economical manner the powers, duties and respon-
17 sibilities of the office.

18 (b) Notwithstanding the provisions of section three
19 and four, article six, chapter twenty-nine of this code
20 relating to the manner in which additions are made to
21 the list of positions in the classified service, and any
22 other provision of this code to the contrary, the positions
23 held by employees of the office shall be positions in the
24 classified service except for those positions named in
25 subdivisions (2),(3),(4),(9) and (12), subsection (a) of said
26 section four.

27 (c) Persons who are employees of the office of child
28 support enforcement in the department of human
29 services on the day preceding the effective date of this
30 section shall be given the option of continuing their
31 employment with the department of human services by
32 filling vacancies in existing positions elsewhere within
33 the department for which they qualify, or such persons
34 shall be assigned to positions in the child advocate office,
35 retaining their then current merit or civil service
36 ratings under the classified service.

§48A-2-7. Powers and duties of the director.

1 (a) The director may promulgate legislative rules in
2 accordance with the provisions of article three, chapter
3 twenty-nine-a of this code where such rules are required
4 to implement the provisions of this chapter.

5 (b) The director shall annually prepare a proposed

6 budget for the next fiscal year, and submit such budget
7 to the commissioner. Such budget shall include all sums
8 necessary to support the activities of the child advocate
9 office.

10 (c) In addition to any other duties required by this
11 chapter, the director shall:

12 (1) Develop and recommend guidelines for the con-
13 duct, operations, and procedures of the office and his or
14 her employees, including, but not limited to, the
15 following:

16 (A) Case load and staffing standards for employees
17 who perform investigation and recommendation func-
18 tions, enforcement functions, and clerical functions.

19 (B) Orientation programs for clients of the office.

20 (C) Public educational programs regarding domestic
21 relations law and community resources, including
22 financial and other counseling, and employment
23 opportunities.

24 (D) Model pamphlets and procedural forms, which
25 shall be distributed to each local office serving clients.

26 (2) Provide training programs for the childrens'
27 advocates and other employees of the office, to better
28 enable them to carry out the duties described in this
29 chapter.

30 (3) Gather and monitor relevant statistics.

31 (4) Develop and recommend guidelines to be used in
32 determining whether or not visitation has been wrong-
33 fully denied or custody has been abused.

34 (5) Develop standards and procedures for the transfer
35 of part or all of the responsibilities for a case from one
36 unit of the office to another in situations considered
37 appropriate.

§48A-2-8. Guidelines for child support awards.

1 (a) On or before the first day of October, one thousand
2 nine hundred eighty-seven, the director of the child
3 advocate office shall, by legislative rule, establish

4 guidelines for child support award amounts so as to
5 insure greater uniformity by those persons who make
6 child support recommendations and enter child support
7 orders, and to increase predictability for parents,
8 children and other persons who are directly affected by
9 child support orders. Such guidelines shall be followed
10 by the children's advocate, the family law master and
11 the circuit court unless, in each instance, the advocate,
12 master or judge sets forth, in writing, reasons for not
13 following the guidelines in the particular case involved.
14 Notwithstanding the existence of such guidelines,
15 individual cases will still be considered on their own
16 merits.

17 (b) The Legislature, by the enactment of this article,
18 recognizes that children have a right to share in their
19 natural parents' level of living. Accordingly, guidelines
20 promulgated under the provisions of this section shall
21 not be based upon any schedule of minimum costs for
22 rearing children based upon subsistence level amounts
23 set forth by various agencies of government. The
24 Legislature recognizes that expenditures in families are
25 not made in accordance with subsistence level
26 standards, but are rather made in proportion to
27 household income, and as parental incomes increase or
28 decrease, the actual dollar expenditures for children
29 also increase or decrease correspondingly. In order to
30 insure that children properly share in their parents'
31 resources, regardless of family structure, the guidelines
32 shall be structured so as to provide that after a
33 consideration of respective parental incomes, that child
34 support will be related, to the extent practicable, to the
35 level of living which such children would enjoy if they
36 were living in a household with both parents present.

37 (c) The guidelines promulgated under the provisions
38 of this section shall take into consideration the financial
39 contributions of both parents. The Legislature recog-
40 nizes that expenditures in households are made in
41 aggregate form and that total family income is pooled
42 to determine the level at which the family can live. The
43 guidelines shall provide for examining the financial
44 contributions of both parents in relationship to total

45 income, so as to establish and equitably apportion the
46 child support obligation. Under the guidelines, the child
47 support obligation of each parent will vary proportion-
48 ately according to their individual incomes.

49 (d) The guidelines shall be structured so as to take into
50 consideration any pre-existing support orders which
51 impose additional duties of support upon an obligor
52 outside of the instant case, and shall provide direction
53 in cases involving split or shared custody.

54 (e) The guidelines shall have application to cases of
55 divorce, paternity, actions for support, and modifica-
56 tions thereof. (f) In promulgating the legislative rule
57 provided for under the provisions of this section, the
58 director shall be directed by the following legislative
59 findings:

60 (1) That amounts to be fixed as child support should
61 not include awards for alimony, notwithstanding the
62 fact that any amount fixed as child support will impact
63 upon the living conditions of custodial parents;

64 (2) That parental expenditures on children represent
65 a relatively constant percentage of family consumption
66 as family consumption increases, so that as family
67 income increases, the family's level of consumption
68 increases, and the children should share in and benefit
69 from this increase;

70 (3) That parental expenditures on children represent
71 a declining proportion of family income as the gross
72 income of the family increases, so that while total dollar
73 outlays for children have a positive relationship to the
74 family's gross income, the proportion of gross family
75 income allotted for the children has a negative relation-
76 ship to gross income;

77 (4) That expenditures on children vary according to
78 the number of children in the family, and as the number
79 of children in the family increase, the expenditures for
80 the children as a group increase, and the expenditures
81 on each individual child decrease; so that due to
82 increasing economies of scale and the increased sharing
83 of resources among family members, spending will not

84 increase in direct proportion to the number of children;

85 (5) That as children grow older, expenditures on
86 children increase, particularly during the teenage years.

§48A-2-9. Authority of the director to enter into cooperative agreements.

1 (a) The director may, in his discretion, enter into
2 cooperative arrangements with state courts, federal
3 courts, and law enforcement officials within this state.

4 (b) Such agreements shall:

5 (1) Assist the office in implementing the provisions of
6 this chapter, including entering into financial arrange-
7 ments with such courts or officials so as to assure
8 optimum results under the office's program of enforce-
9 ment of child and spousal support, and

10 (2) Provide for entering into such cooperative arran-
11 gements with respect to any other matters of common
12 concern to such courts or officials and the office.

§48A-2-10. Establishment of parent locator service.

1 (a) The office shall establish a parent locator service
2 to locate obligors, utilizing all sources of information
3 and available records and the parent locator service in
4 the federal department of health and human services.

5 (b) Upon entering into an agreement with the secre-
6 tary of the federal department of health and human
7 services for the use of that department's parent locator
8 service, the office shall accept and transmit to the
9 secretary requests for information to be furnished by
10 such federal parent locator service to authorized
11 persons. The office shall charge a reasonable fee
12 sufficient to cover the costs to the state and to the federal
13 department of health and human services incurred by
14 reason of such requests, and shall transfer to that
15 department from time to time so much of the fees
16 collected as are attributable to the costs incurred by that
17 department.

§48A-2-11. Cooperation with other states in the enforcement of domestic relations obligations.

1 (a) The office will cooperate with any other state in
2 the following:

3 (1) In establishing paternity, if necessary;

4 (2) In locating an obligor residing temporarily or
5 permanently in this state, against whom any action is
6 being taken for the establishment of paternity or the
7 enforcement of child and spousal support;

8 (3) In securing compliance by an obligor residing
9 temporarily or permanently in this state, with an order
10 issued by a court of competent jurisdiction against such
11 obligor for the support and maintenance of a child or
12 children or the parent of such child or children; and

13 (4) In carrying out other functions necessary to a
14 program of child and spousal support enforcement.

15 (b) The director shall, by legislative rule, establish
16 procedures necessary to extend the office's system of
17 withholding under section three, article five of this
18 chapter so that such system will include withholding
19 from income derived within this state in cases where the
20 applicable support orders were issued in other states, in
21 order to assure that child support owed by obligors in
22 this state or any other state will be collected without
23 regard to the residence of the child for whom the
24 support is payable or the residence of such child's
25 custodial parent.

§48A-2-12. Disbursements of amounts collected as support.

1 (a) Amounts collected as child or spousal support by
2 the office shall be distributed within ten days of receipt,
3 except as otherwise specifically provided in this chapter.
4 Such amounts shall, except as otherwise provided under
5 the provisions of subsection (c) of this section, be
6 distributed as follows:

7 (1) The first fifty dollars of such amounts as are
8 collected periodically which represent monthly support
9 payments shall be paid to the obligee without affecting
10 the eligibility of such person's family for assistance from
11 the department of human services or decreasing any

12 amount otherwise payable as assistance to such family
13 during such month;

14 (2) Such amounts as are collected periodically which
15 are in excess of any amount paid to the family under
16 subdivision (1) of this subsection and which represent
17 monthly support payments shall be paid by the office to
18 the appropriate administrative unit of the department
19 of human services to reimburse it for assistance
20 payments to the family during such period (with
21 appropriate reimbursement of the federal government
22 to the extent of its participation in the financing);

23 (3) Such amounts as are in excess of amounts required
24 to reimburse the department of human services under
25 subdivision (2) of this subsection and are not in excess
26 of the amount required to be paid during such period
27 to the family by a court order shall be paid to the
28 obligee; and

29 (4) Such amounts as are in excess of amounts required
30 to be distributed under subdivisions (1), (2) and (3) of
31 this subsection shall be (A) paid by the office to the
32 appropriate administrative unit of the department of
33 human services (with appropriate reimbursement of the
34 federal government to the extent of its participation in
35 the financing) as reimbursement for any past assistance
36 payments made to the family for which the department
37 has not been reimbursed or (B) if no assistance
38 payments have been made by the department which
39 have not been repaid, such amounts shall be paid to the
40 obligee.

41 (b)(1) Whenever a family for whom support payments
42 have been collected and distributed under the provisions
43 of this chapter ceases to receive assistance from the
44 department of human services, the office shall:

45 (A) Continue to collect amounts of support payments
46 which represent monthly support payments from the
47 obligor for a period of not to exceed three months from
48 the month following the month in which such family
49 ceased to receive assistance from the department of
50 human services, and pay all amounts so collected, which
51 represent monthly support payments, to the obligee; and

52 (B) At the end of such three-month period, if the office
53 is authorized to do so by the obligee on whose behalf the
54 collection will be made, continue to collect amounts of
55 support payments which represent monthly support
56 payments from the obligor and pay any amount so
57 collected, which represents monthly support payments,
58 to the family (without requiring any formal reapplica-
59 tion and without the imposition of any application fee)
60 on the same basis as in the case of other obligees who
61 are not receiving assistance from the department of
62 human services.

63 (2) So much of any amounts of support so collected as
64 are in excess of the payments required to be made in
65 paragraph (A), subdivision (1) of this subsection shall be
66 distributed in the manner provided by paragraphs (A)
67 and (B), subdivision (4), subsection (a) of this section
68 with respect to excess amounts described in subsection
69 (a) of this section.

70 (c)(1) Notwithstanding the preceding provisions of this
71 section, amounts collected by the office as child support
72 for months in any period on behalf of a child for whom
73 the department of human services is making foster care
74 maintenance payments shall:

75 (A) Be paid by the office to the appropriate adminis-
76 trative unit of the department of human services to the
77 extent necessary to reimburse the department for foster
78 care maintenance payments made with respect to the
79 child during such period (with appropriate reimburse-
80 ment of the federal government to the extent of its
81 participation in financing);

82 (B) Be paid to the appropriate administrative unit of
83 the department of human services to the extent that the
84 amounts collected exceed the foster care maintenance
85 payments made with respect to the child during such
86 period but do not exceed the amounts required by a
87 court order to be paid as support on behalf of the child
88 during such period; and the department of human
89 services may use the payments in the manner it
90 determines will serve the best interests of the child,
91 including setting such payments aside for the child's

92 future needs or making all or a part thereof available
93 to the person responsible for meeting the child's day-to-
94 day needs; and

95 (C) Be paid to the appropriate administrative unit of
96 the department of human services if any portion of the
97 amounts collected remains after making the payments
98 required under paragraphs (A) and (B) of this subdivi-
99 sion, to the extent that such portion is necessary to
100 reimburse the department of human services, (with
101 appropriate reimbursement to the federal government
102 to the extent of its participation in the financing) for any
103 past foster care maintenance payments, or payments of
104 aid to families with dependent children which were
105 made with respect to the child, (and with respect to
106 which past collections have not previously been
107 retained);

108 (2) Any balance of the amounts required to be paid
109 under the provisions of subdivision (1) shall be paid to
110 the appropriate administrative unit of the department
111 of human services, for use by the department in
112 accordance with paragraph (B) of this subdivision.

113 (d) Any payment required to be made under the
114 provisions of this section to a family shall be made to
115 the resident parent, legal guardian or caretaker relative
116 having custody of or responsibility for the child or
117 children.

118 (e) The director shall establish bonding requirements
119 for employees of the office who receive, disburse, handle,
120 or have access to cash.

121 (f) The director shall maintain methods of administra-
122 tion which are designed to assure that employees of the
123 office responsible for handling cash receipts shall not
124 participate in accounting or operating functions which
125 would permit them to conceal in the accounting records
126 the misuse of cash receipts: *Provided*, That the director
127 may provide for exceptions to this requirement in the
128 case of sparsely populated areas in this state where the
129 hiring of unreasonable additional staff in the local office
130 would otherwise be necessary.

§48A-2-13. Payment of support to the child advocate office.

1 All support payments owed to an obligee who is an
2 applicant for or recipient of the services of the office
3 shall be paid to the office. Any other obligee owed a duty
4 of support under the terms of a support order entered
5 by a court of competent jurisdiction may request that
6 the support payments be made to the office. In such
7 case, the office shall proceed to receive and disburse
8 such support payments to or on behalf of the obligee as
9 provided by law.

§48A-2-14. Authorization for data processing and retrieval system.

1 In accordance with an initial and annually updated
2 advance data processing planning document approved
3 by the secretary of the federal department of health and
4 human services, the office may establish an automatic
5 data processing and retrieval system designed effec-
6 tively and efficiently to assist the director and his or her
7 employees in carrying out the provisions of this chapter.

§48A-2-15. Obtaining support from federal tax refunds.

1 (a) The director shall, by legislative rule, place in
2 effect procedures necessary for the office to obtain
3 payment of past due support from federal tax refunds
4 from overpayments made to the secretary of the
5 treasury of the United States, and shall take all steps
6 necessary to implement and utilize such procedures.

7 (1) Such legislative rule shall, at a minimum,
8 prescribe:

9 (A) The time or times at which the office must serve
10 on the obligor or submit to the secretary of the treasury
11 notices of past due support;

12 (B) The manner in which such notices must be served
13 on the obligor or submitted to the secretary of the
14 treasury;

15 (C) The necessary information which must be con-
16 tained in or accompany the notices;

17 (D) The amount of the fee, if any, to be paid to the
18 secretary of the treasury for the full cost of applying the
19 procedure whereby past due support is obtained from
20 federal tax refunds.

21 (E) The amount of the fee, not to exceed twenty-five
22 dollars, which the office may collect from the obligee in
23 a case where such obligee is an applicant for the services
24 of the office, but is not a recipient of assistance from the
25 department of human services in the form of aid to
26 families with dependent children. The office shall
27 inform such obligee in advance of the amount of the fee
28 to be charged.

29 (2) When the obligor owes past due support which has
30 been assigned to the department of human services as
31 a condition of eligibility for aid from the department,
32 such legislative rule shall prescribe:

33 (A) The minimum amount of past due support which
34 must have accrued before the office may act to obtain
35 payment of past due support from such federal tax
36 refunds; and

37 (B) The time period for which such accrued support
38 payments must have been due before the office may act
39 to obtain payment of past due support from such federal
40 tax refunds.

41 (3) When an obligor owes past due support that has
42 not been assigned to the department of human services
43 but which the office has agreed to collect for the obligee,
44 then in such case, withholding from federal tax refunds
45 will not be pursued unless the office has examined the
46 obligor's pattern of payment of support and the obligee's
47 likelihood of successfully pursuing other enforcement
48 actions, and has determined that the amount of past due
49 support which will be owed, at the time the withholding
50 is to be made, will be five hundred dollars or more. In
51 determining whether the amount of past due support
52 will be five hundred dollars or more, the office will
53 consider the amount of all unpaid past due support,
54 including that which may have accrued prior to the time
55 that the office first agreed to enforce the support order.

56 (b) Except as provided in subsection (c) of this section,
57 "past due support" means, for the purposes of this
58 section, the amount of unpaid past due support owed
59 under the terms of a support order to or on behalf of
60 a minor child, or to or on behalf of a minor child and
61 the parent with whom the child is living, regardless of
62 whether the amount has been reduced to judgment or
63 not.

64 (c) For the purposes of subdivision (3), subsection (a)
65 of this section, "past due support" shall not include past
66 due support owed to or on behalf of the parent with
67 whom the child is living.

68 (d) The legislative rule promulgated by the director
69 pursuant to this section shall, at a minimum, provide
70 that prior to notifying the secretary of treasury of past
71 due support, a notice to the obligor as prescribed under
72 subsection (a) of this section shall:

73 (1) Notify the obligor that a withholding will be made
74 from any refund otherwise payable to such obligor;

75 (2) Instruct the obligor of the steps which may be
76 taken to contest (A) the determination of the office that
77 past due support is owed, or (B) the amount of the past
78 due support, and

79 (3) Provide information with respect to the procedures
80 to be followed, in the case of a joint return, to protect
81 the share of the refund which may be payable to another
82 person.

83 (e) If the office is notified by the secretary of the
84 treasury that the refund from which withholding is
85 proposed to be made is based upon a joint return, and
86 if the past due support which is involved has not been
87 assigned to the department of human services, then the
88 office may delay distribution of the amount withheld
89 until such time as the secretary of the treasury notifies
90 the office that the other person filing the joint return
91 has received his or her proper share of the refund, but
92 such delay shall not exceed six months.

93 (f) In any case in which an amount is withheld by
94 the secretary of the treasury under the provisions of this

95 section and paid to the office, if the office subsequently
96 determines that the amount certified as past due was in
97 excess of the amount actually owed at the time the
98 amount withheld is to be distributed to or on behalf of
99 the child, the office shall pay the excess amount
100 withheld to the obligor thought to have owed the past
101 due support, or, in the case of amounts withheld on the
102 basis of a joint return, jointly to the parties filing such
103 return.

**§48A-2-16. Obtaining support from state income tax
refunds.**

1 (a) The tax commissioner shall place in effect proce-
2 dures necessary for the office to obtain payment of past
3 due support from state income tax refunds from
4 overpayments made to the tax commissioner pursuant
5 to the provisions of article twenty-one, chapter eleven of
6 this code.

7 (b) The director shall, by legislative rule, place in
8 effect procedures necessary for the office to enforce a
9 support order through a notice to the tax commissioner
10 which will cause any refund of state income tax which
11 would otherwise be payable to an obligor to be reduced
12 by the amount of overdue support owed by such obligor.
13

14 (1) Such legislative rule shall, at a minimum,
15 prescribe:

16 (A) The time or times at which the office must serve
17 on the obligor or submit to the tax commissioner notices
18 of past due support;

19 (B) The manner in which such notices must be served
20 on the obligor or submitted to the tax commissioner;

21 (C) The necessary information which must be con-
22 tained in or accompany the notices;

23 (D) The amount of the fee, if any, to be paid to the
24 tax commissioner for the full cost of applying the
25 procedure whereby past due support is obtained from
26 state income tax refunds; and

27 (E) The amount of the fee, not to exceed twenty-five

28 dollars, which the office may deduct from the obligor's
29 state income tax refund in a case where the obligee is
30 an applicant for the services of the office, but is not a
31 recipient of assistance from the department of human
32 services in the form of aid to families with dependent
33 children.

34 (2) Withholding from state income tax refunds will not
35 be pursued unless the office has examined the obligor's
36 pattern of payment of support and the obligee's likeli-
37 hood of successfully pursuing other enforcement actions,
38 and has determined that the amount of past due support
39 which will be owed, at the time the withholding is to
40 be made, will be one hundred dollars or more. In
41 determining whether the amount of past due support
42 will be one hundred dollars or more, the office will
43 consider the amount of all unpaid past due support,
44 including that which may have accrued prior to the time
45 that the office first agreed to enforce the support order.

46 (c) The director of the child advocate office shall enter
47 into agreements with the secretary of the treasury and
48 the tax commissioner, as well as other appropriate
49 governmental agencies, to secure information relating to
50 the social security number or numbers and the address
51 or addresses of any obligor, so as to provide notice
52 between such agencies to aid the office in requesting
53 state income tax deductions, and to aid the tax
54 commissioner in enforcing such deductions. In each such
55 case, the tax commissioner, in processing the state
56 income tax deduction, will notify the office of the
57 obligor's home address and social security number or
58 numbers. The office will provide this information to any
59 other state involved in processing the support order.

60 (d) For the purposes of this section, "past due support"
61 means the amount of unpaid past due support owed
62 under the terms of a support order to or on behalf of
63 a child, or to or on behalf of a minor child and the parent
64 with whom the child is living, regardless of whether the
65 amount has been reduced to judgment or not.

66 (e) The office may, under the provisions of this section,
67 enforce the collection of past due support on behalf of

68 a child who has reached the age of majority.

69 (f) The legislative rule promulgated by the director
70 pursuant to the provisions of this section shall, at a
71 minimum, provide that prior to notifying the tax
72 commissioner of past due support, a notice to the obligor
73 as prescribed under subsection (a) of this section shall:

74 (1) Notify the obligor that a withholding will be made
75 from any refund otherwise payable to such obligor;

76 (2) Instruct the obligor of the steps which may be
77 taken to contest the determination of the office that past
78 due support is owed or the amount of the past due
79 support, and

80 (3) Provide information with respect to the procedures
81 to be followed, in the case of a joint return, to protect
82 the share of the refund which may be payable to another
83 person.

84 (g) If the office is notified by the tax commissioner
85 that the refund from which withholding is proposed to
86 be made is based upon a joint return, and if the past
87 due support which is involved has not been assigned to
88 the department of human services, then the office may
89 delay distribution of the amount withheld until such
90 time as the tax commissioner notifies the office that the
91 other person filing the joint return has received his or
92 her proper share of the refund, but such delay shall not
93 exceed six months.

94 (h) In any case in which an amount is withheld by the
95 tax commissioner under the provisions of this section
96 and paid to the office, if the office subsequently
97 determines that the amount certified as past due was in
98 excess of the amount actually owed at the time the
99 amount withheld is to be distributed, the office shall pay
100 the excess amount withheld to the obligor thought to
101 have owed the past due support, or, in the case of
102 amounts withheld on the basis of a joint return, jointly
103 to the parties filing such return.

104 (i) The director shall, by legislative rule, structure the
105 time and method by which all amounts received by the
106 office, as payments of past due support from state

107 income tax refunds, are distributed. In a case where an
108 obligee is an applicant for the services of the office, but
109 is not a current recipient of assistance from the
110 department of human services in the form of aid to
111 families with dependent children, such method of
112 distribution shall give priority to the obligee and the
113 family of the obligee by paying such amounts to the
114 obligee first rather than using them first to reimburse
115 the department of human services.

§48A-2-17. Obtaining support from unemployment compensation benefits.

1 (a) The director shall determine on a periodic basis
2 whether individuals receiving unemployment compensa-
3 tion owe child support obligations which are being
4 enforced or have been requested to be enforced by the
5 office. If an individual is receiving such compensation
6 and owes any such child support obligation which is not
7 being met, the office shall enter into an agreement with
8 such individual to have specified amounts withheld
9 otherwise payable to such individual, and shall submit
10 a copy of such agreement to the department of employ-
11 ment security. In the absence of such agreement, the
12 office shall bring legal process to require the withhold-
13 ing of amounts from such compensation.

14 (b) The director shall enter into a written agreement
15 with the department of employment security for the
16 purpose of withholding unemployment compensation
17 from individuals with unmet support obligations being
18 enforced by the office. The office shall agree only to a
19 withholding program that it expects to be cost effective,
20 and, as to reimbursement, shall agree only to reimburse
21 the department of employment security for its actual,
22 incremental costs of providing services to the office.

23 (c) The director shall establish and use written
24 criteria for selecting cases to pursue through the
25 withholding of unemployment compensation for support
26 purposes. These criteria shall be designed to insure
27 maximum case selection and minimal discretion in the
28 selection process.

29 (d) The director shall, not less than annually, provide

30 a receipt to an individual who requests a receipt for the
31 support paid through the withholding of unemployment
32 compensation, if receipts are not provided through other
33 means.

34 (e) The director shall, through direct contact with the
35 department of employment security, process cases
36 through the department of employment security in this
37 state, and shall process cases through support enforce-
38 ment agencies in other states. The director shall receive
39 all amounts withheld by the department of employment
40 security in this state, forwarding any amounts withheld
41 on behalf of support enforcement agencies in other
42 states to those agencies.

43 (f) The director shall, not less than annually, review
44 and document program operations, including case
45 selection criteria established under subsection (c) of this
46 section, and the costs of the withholding process versus
47 the amounts collected and, as necessary, modify proce-
48 dures and renegotiate the services provided by the
49 department of employment security to improve program
50 and cost effectiveness.

51 (g) For the purposes of this section:

52 (1) "Legal process" means a writ, order, summons or
53 other similar process in the nature of garnishment
54 which is issued by a court of competent jurisdiction or
55 by an authorized official pursuant to an order of such
56 court or pursuant to state or local law.

57 (2) "Unemployment compensation" means any com-
58 pensation under state unemployment compensation law
59 (including amounts payable in accordance with agree-
60 ments under any federal unemployment compensation
61 law). It includes extended benefits, unemployment
62 compensation for federal employees, unemployment
63 compensation for ex-servicemen, trade readjustment
64 allowances, disaster unemployment assistance, and
65 payments under the Federal Redwood National Park
66 Expansion Act.

**§48A-2-18. Obtaining support from worker's
compensation.**

1 (a) The director shall determine on a periodic basis
2 whether individuals receiving worker's compensation
3 benefits owe child support obligations which are being
4 enforced or have been requested to be enforced by the
5 office. If an individual is receiving such compensation
6 and owes any such child support obligation which is not
7 being met, the office shall enter into an agreement with
8 such individual to have specified amounts withheld
9 otherwise payable to such individual, and shall submit
10 a copy of such agreement to the worker's compensation
11 commissioner. In the absence of such agreement, the
12 office shall bring legal process to require the withhold-
13 ing of amounts from such compensation.

14 (b) The director shall enter into a written agreement
15 with the worker's compensation commissioner for the
16 purpose of withholding worker's compensation benefits
17 from individuals with unmet support obligations being
18 enforced by the office. The office shall agree only to a
19 withholding program that it expects to be cost effective,
20 and, as to reimbursement, shall agree only to reimburse
21 the worker's compensation commissioner for the
22 commissioner's actual, incremental costs of providing
23 services to the support enforcement agency.

24 (c) The director shall establish and use written
25 criteria for selecting cases to pursue through the
26 withholding of worker's compensation benefits for
27 support purposes. These criteria shall be designed to
28 insure maximum case selection and minimal discretion
29 in the selection process.

30 (d) The director shall, not less than annually, provide
31 a receipt to an individual who requests a receipt for the
32 support paid through the withholding of worker's
33 compensation benefits, if receipts are not provided
34 through other means.

35 (e) The director shall, through direct contact with the
36 worker's compensation commissioner, process cases
37 through the worker's compensation commissioner in this
38 state, and shall process cases through support enforce-
39 ment agencies in other states. The director shall receive
40 all amounts withheld by the worker's compensation

41 commissioner in this state, forwarding any amounts
42 withheld on behalf of support enforcement agencies in
43 other states to those agencies.

44 (f) The director shall, not less than annually, review
45 and document program operations, including case
46 selection criteria established under subsection (c) of this
47 section, and the costs of the withholding process versus
48 the amounts collected and, as necessary, modify proce-
49 dures and renegotiate the services provided by the
50 worker's compensation commissioner to improve
51 program and cost effectiveness.

52 (g) For the purposes of this section:

53 (1) "Legal process" means a writ, order, summons or
54 other similar process in the nature of garnishment
55 which is issued by a court of competent jurisdiction or
56 by an authorized official pursuant to an order of such
57 court or pursuant to state or local law.

58 (2) "Worker's compensation benefits" means any
59 compensation payable under state worker's compensa-
60 tion law as temporary total disability benefits.

§48A-2-19. Providing information to credit reporting agencies.

1 The director, shall by legislative rule, establish
2 procedures whereby information regarding the amount
3 of overdue support owed by an obligor residing in this
4 state will be made available to any consumer reporting
5 agency upon the request of the agency: *Provided*, That
6 such legislative rule shall provide for the following:

7 (1) If the amount of overdue support is less than one
8 thousand dollars, such information shall not be
9 available;

10 (2) If the amount of overdue support is one thousand
11 dollars or more, any such information with respect to
12 an obligor shall be made available under such proce-
13 dures only after notice has been sent to such obligor of
14 the proposed action, and such obligor has been given a
15 reasonable opportunity to contest the accuracy of such
16 information; and

17 (3) The imposition of a fee for furnishing such
18 information, not to exceed the actual cost thereof.

§48A-2-20. Publicizing child support enforcement services.

1 The child advocate office shall regularly and fre-
2 quently publicize, through public service announce-
3 ments, the availability of child support enforcement
4 services under the provisions of this chapter and
5 otherwise, including information as to any application
6 fees for such services and a toll-free telephone number
7 and a postal address at which further information may
8 be obtained.

§48A-2-21. Legislative rules governing waiver of fees.

1 The director shall, by legislative rule, describe the
2 circumstances under which fees charged by the office
3 may be waived, and such rule shall provide for the
4 waiver of any fee, in whole or in part, when such fee
5 would otherwise be required to be paid under the
6 provisions of this chapter.

§48A-2-22. Family law masters fund.

1 The office and the clerks of the circuit courts shall,
2 on or before the last day of each month, transmit all fees
3 and costs received for the services of the office or the
4 family law master under this chapter to the state
5 treasurer for deposit in the state treasury to the credit
6 of a special revenue fund to be known as the "family law
7 masters fund", which is hereby created. All moneys
8 collected and received under this chapter and paid into
9 the state treasury and credited to the "family law
10 masters fund" shall be used solely for paying the costs
11 associated with the duties imposed upon the family law
12 masters under the provisions of this chapter which
13 require activities by the masters which are not subject
14 to being matched with federal funds or subject to
15 reimbursement by the federal government, and
16 requisitions shall be drawn upon the fund only for such
17 purposes. Such moneys shall not be treated by the
18 auditor and treasurer as part of the general revenue of
19 the state.

ARTICLE 3. CHILDRENS' ADVOCATE.**§48A-3-1. Purposes; how article to be construed.**

1 (a) The purposes of this article are:

2 (1) To enumerate and describe the functions and
3 duties of the childrens' advocate as an employee of the
4 child advocate office;

5 (2) To ensure that procedures followed by the child-
6 rens' advocate will protect the best interests of children
7 in domestic relations matters;

8 (3) To encourage and assist parties voluntarily to
9 resolve contested domestic relations matters by
10 agreement;

11 (4) To compel the enforcement of visitation and
12 custody orders; and

13 (5) To compel the enforcement of support orders,
14 thereby ensuring that persons legally responsible for the
15 care and support of children assume their legal obliga-
16 tions and reduce the financial cost to this state of
17 providing public assistance funds for the care of
18 children.

19 (b) This article shall be construed to facilitate the
20 resolution of domestic relations matters.

§48A-3-2. Placement of childrens' advocates throughout the state; supervision; office procedures.

1 (a) The child advocate office shall employ twenty
2 employees in the position of childrens' advocate, and the
3 offices of the childrens' advocates shall be distributed
4 geographically so as to provide an office for each of the
5 following areas of the state:

6 (1) The counties of Brooke, Hancock and Ohio;

7 (2) The counties of Marshall, Tyler and Wetzel;

8 (3) The counties of Pleasants, Ritchie, Wirt and Wood;

9 (4) The counties of Calhoun, Jackson, and Roane;

10 (5) The counties of Mason and Putnam;

- 11 (6) The counties of Cabell and Wayne;
12 (7) The counties of McDowell and Wyoming;
13 (8) The counties of Logan and Mingo;
14 (9) The counties of Kanawha, Lincoln and Boone
15 (10) The county of Raleigh;
16 (11) The counties of Mercer, Monroe and Summers;
17 (12) The counties of Fayette and Nicholas;
18 (13) The counties of Greenbrier and Pocahontas;
19 (14) The counties of Braxton, Clay, Gilmer and
20 Webster;
21 (15) The counties of Doddridge, Harrison, Lewis and
22 Upshur;
23 (16) The counties of Marion and Taylor;
24 (17) The counties of Monongalia and Preston;
25 (18) The counties of Barbour, Randolph and Tucker;
26 (19) The counties of Grant, Hampshire, Hardy,
27 Mineral and Pendleton; and
28 (20) The counties of Berkeley, Jefferson and Morgan.
29 (b) Each childrens' advocate shall be appointed by the
30 director of the child advocate office. The childrens'
31 advocates shall be duly qualified attorneys licensed to
32 practice in the courts of this state.
33 (c) The childrens' advocate is an employee of the child
34 advocate office.

§48A-3-3. Duties of the childrens' advocate.

- 1 (a) Before adjudication of a domestic relations matter,
2 the childrens' advocate shall have the following duties:
3 (1) To provide an informational pamphlet, designed in
4 consultation with the director, to each party to a
5 domestic relations matter. The informational pamphlet
6 shall explain the procedures of the court and the
7 childrens' advocate; the duties of the childrens' advocate;
8 the rights and responsibilities of the parties; and the

9 availability of human services in the community. The
10 informational pamphlet shall be provided as soon as
11 possible after the filing of a complaint or other initiating
12 pleading. Upon request, a party shall receive an oral
13 explanation of the informational pamphlet from the
14 office of the childrens' advocate.

15 (2) To investigate all relevant facts, and to make a
16 written report and recommendation to the parties and
17 to the court regarding child custody or visitation, or
18 both, if there is a dispute as to child custody or
19 visitation, or both, or if ordered to do so by the court.
20 The investigation may include reports and evaluations
21 by outside persons or agencies if requested by the
22 parties or the court, and shall include documentation of
23 alleged facts, if practicable.

24 (3) To investigate all relevant facts and to make a
25 written report and recommendation to the parties and
26 to the court regarding child or spousal support. The
27 investigation may include reports and evaluations by
28 outside persons or agencies if requested by the parties
29 or the court, and shall include documentation of alleged
30 facts, if practicable. The child support formula promul-
31 gated pursuant to the provisions of section eight, article
32 two of this chapter shall be used as a guideline in
33 recommending child support: *Provided*, That whenever
34 the recommended child support falls outside the
35 guidelines, the childrens' advocate shall file written
36 reviewable reasons setting forth findings of fact
37 sufficient to justify the recommendation.

38 (b) The childrens' advocate shall act to establish the
39 paternity of every child born out of wedlock for whom
40 paternity has not been established, when such child's
41 primary caretaker is an applicant for or recipient of aid
42 to families with dependent children, and when such
43 primary caretaker has assigned to the department of
44 human services any rights to support for the child which
45 might be forthcoming from the putative father: *Pro-*
46 *vided*, That if the childrens' advocate is informed by the
47 commissioner of the department of human services or
48 his or her authorized employee that it has been
49 determined that it is against the best interest of the

50 child to establish paternity, the childrens' advocate shall
51 decline to so act. The childrens' advocate, upon the
52 request of any primary caretaker of a child born out of
53 wedlock, regardless of whether such primary caretaker
54 is an applicant or recipient of aid to families with
55 dependent children, shall undertake to establish the
56 paternity of such child.

57 (c) The childrens' advocate shall undertake to secure
58 support for any individual who is receiving aid to
59 families with dependent children when such individual
60 has assigned to the department of human services any
61 rights to support from any other person such individual
62 may have: *Provided*, That if the childrens' advocate is
63 informed by the commissioner of the department of
64 human services or his or her authorized employee that
65 it has been determined that it is against the best
66 interests of a child to secure support on the child's
67 behalf, the childrens' advocate shall decline to so act.
68 The childrens' advocate, upon the request of any
69 individual, regardless of whether such individual is an
70 applicant or recipient of aid to families with dependent
71 children, shall undertake to secure support for the
72 individual. If circumstances require, the childrens'
73 advocate shall utilize the provisions of article seven of
74 this chapter and any other reciprocal arrangements
75 which may be adopted with other states for the
76 establishment and enforcement of support obligations,
77 and if such arrangements and other means have proven
78 ineffective, the childrens' advocate may utilize the
79 federal courts to obtain and enforce court orders for
80 support.

81 (d) The childrens' advocate shall pursue the enforce-
82 ment of support orders through the withholding from
83 income of amounts payable as support:

84 (1) Without the necessity of an application from the
85 obligee in the case of a support obligation owed to an
86 obligee to whom services are already being provided
87 under the provisions of this chapter; and

88 (2) On the basis of an application for services in the
89 case of any other support obligation arising from a

90 support order entered by a court of competent
91 jurisdiction.

92 (e) The childrens' advocate may decline to commence
93 an action to obtain an order of support under the
94 provisions of section one, article five of this chapter if
95 an action for divorce, annulment, or separate maintenance
96 is pending, or the filing of such action is
97 imminent, and such action will determine the issue of
98 support for the child: *Provided*, That such action shall
99 be deemed to be imminent if it is proposed by the
100 obligee to be commenced within the twenty-eight days
101 next following a decision by the childrens' advocate that
102 an action should properly be brought to obtain an order
103 for support.

104 (f) If the child advocate office, through the childrens'
105 advocate, shall undertake paternity determination
106 services, child support collection, or support collection
107 services for a spouse or former spouse upon the written
108 request of a individual who is not an applicant or
109 recipient of assistance from the department of human
110 services, the office may impose an application fee for
111 furnishing such services. Such application fee shall be
112 in a reasonable amount, not to exceed twenty-five
113 dollars, as determined by the director: *Provided*, That
114 the director may fix such amount at a higher or lower
115 rate which is uniform for this state and all other states
116 if the secretary of the federal department of health and
117 human services determines that a uniform rate is
118 appropriate for any fiscal year to reflect increases or
119 decreases in administrative costs. Any cost in excess of
120 the application fee so imposed may be collected from the
121 obligor who owes the child or spousal support obligation
122 involved.

§48A-3-4. Statements of account.

1 The child advocate office shall provide annually to
2 each obligor and obligee, without charge, one statement
3 of account upon request. Additional statements of
4 account shall be provided at a fee not to exceed two
5 dollars. Statements provided under this subsection are
6 in addition to statements provided for judicial hearings.

§48A-3-5. Enforcement of custody and visitation orders.

1 With regard to a custody or visitation order, the office
2 shall, upon receipt of a written statement setting forth
3 the specific facts alleged to constitute a violation,
4 attempt to mediate the issues involved and reach a
5 settlement between the parties. If such mediation efforts
6 are unsuccessful, the childrens' advocate shall initiate
7 enforcement proceedings, if the childrens' advocate
8 determines that there is reason to believe a violation of
9 a custody or visitation order has occurred. Upon request,
10 the office of the childrens' advocate shall assist a person
11 in preparing a written statement alleging a violation of
12 a custody or visitation order.

**§48A-3-6. Investigations of support and visitation orders;
notice and hearing upon modifications;
petition for change.**

1 (a) In every case in which a final judgment containing
2 a child support order has been entered in a domestic
3 relations matter, the childrens' advocate shall from time
4 to time examine the records and conduct any investiga-
5 tion considered necessary to determine whether the
6 child support amount should be increased or decreased
7 in view of a temporary or permanent change in physical
8 custody of the child which the court has not ordered,
9 increased need of the child or changed financial
10 conditions, as follows:

11 (1) If a child is being supported in whole or in part
12 by assistance payments from the department of human
13 services, at the initiative of the childrens' advocate, if
14 there are reasonable grounds to believe that the amount
15 of child support should be modified, but not less than
16 once each two years.

17 (2) Upon receipt of a written request from an obligee
18 or an obligor. The childrens' advocate may not be
19 required to investigate more than one request received
20 from a party each two years. Within sixty days after
21 receipt of a request under this subdivision, the office of
22 the childrens' advocate shall complete its investigation
23 and make any resulting recommendations and support-
24 ing documents available as required in section three of

25 this article.

26 (b) After a final judgment containing a visitation
27 order has been entered in a domestic relations matter,
28 if there is a dispute as to visitation which is not resolved
29 voluntarily by the parties through a meeting with the
30 office of the childrens' advocate, the childrens' advocate
31 may petition the court for enforcement or modification
32 of the visitation order. A written report and recommen-
33 dation shall accompany the petition.

34 (c) Before a hearing on a proposed modification, the
35 office shall notify both parties of the proposed modifi-
36 cation and afford the parties an opportunity for review
37 and comment.

38 (d) The office shall petition the court for modification
39 of the amount of a child support order if modification
40 is determined to be necessary under subsection (a). A
41 written report and recommendation shall accompany
42 the petition.

43 (e) As used in this section, "changed financial
44 conditions" means increases or decreases in the resour-
45 ces available to either party from any source. Changed
46 financial conditions includes, but is not limited to, the
47 application for or receipt of any form of public assist-
48 ance payments, unemployment compensation and
49 workers' compensation.

§48A-3-7. Vacancies; interim childrens' advocate.

1 (a) If the position of childrens' advocate becomes
2 vacant for any reason, the director shall appoint a
3 person to the position of childrens' advocate not later
4 than six months after the vacancy occurs.

5 (b) If necessary, the director may appoint an interim
6 childrens' advocate to serve for not longer than six
7 months until a childrens' advocate is appointed pursuant
8 to this section.

§48A-3-8. Compensation; expenses.

1 The compensation and expenses of the childrens'
2 advocate and of the employees of the office and all
3 operating expenses incurred by the office shall be fixed

4 by the director and paid by the child advocate office.

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

§48A-4-1. Designation of master; notice of master's hearing; content of notice; determination of issues by consent; hearing.

1 (a) The governor shall appoint family law masters in
2 such numbers and to serve such areas of the state as
3 provided for under the provisions of this article. The
4 appointment of an individual as a master shall be for
5 a term of four years. Upon the expiration of his or her
6 term, a family law master may continue to perform the
7 duties of the office until his or her successor is
8 appointed, or for sixty days after the date of the
9 expiration of the master's term, whichever is earlier.

10 (b) No individual may be appointed to serve as a
11 family law master unless he or she has been for at least
12 five years a member in good standing of the West
13 Virginia state bar association.

14 (c) Removal of a master during the term for which he
15 or she is appointed shall be only for incompetency,
16 misconduct, neglect of duty, or physical or mental
17 disability.

18 (d) A family law master may not engage in the
19 practice of law, and may not engage in any other
20 business, occupation, or employment inconsistent with
21 the expeditious, proper, and impartial performance of
22 his or her duties as a judicial officer.

23 (e) All family law masters, and all necessary clerical
24 and secretarial assistants employed in the offices of
25 family law masters shall be deemed to be officers and
26 employees in the judicial branch of state government.
27 The director of the child advocate office and the
28 commissioner of the department of human services shall
29 enter into an agreement with the administrative office
30 of the supreme court of appeals whereby the office and
31 the department shall contract to pay the administrative
32 office of the supreme court of appeals for the services
33 of the family law masters required to be furnished
34 under the provisions of this chapter which are not

35 otherwise payable from the family law masters fund
36 created under the provisions of section twenty-two,
37 article two of this chapter.

38 (f) A family law master appointed under the provi-
39 sions of this article shall receive as full compensation for
40 his or her services an annual salary of thirty-five
41 thousand dollars. The secretary-clerk of the family law
42 master shall receive an annual salary of fifteen thousand
43 dollars. Disbursement of salaries shall be made by or
44 pursuant to the order of the director of the
45 administrative office of the supreme court of appeals.

46 (g) Family law masters serving under the provisions
47 of this article shall be allowed their actual and necessary
48 expenses incurred in the performance of their duties.
49 Such expenses and compensation shall be determined
50 and paid by the director of the administrative office of
51 the supreme court of appeals under such regulations as
52 he or she may prescribe with the approval of the
53 supreme court of appeals.

54 (h) The offices of the family law masters shall be
55 distributed geographically so as to provide an office of
56 the family law master for each of the following areas:

- 57 (1) The counties of Brooke, Hancock and Ohio;
- 58 (2) The counties of Marshall, Tyler and Wetzel;
- 59 (3) The counties of Pleasants, Ritchie, Wirt and Wood;
- 60 (4) The counties of Calhoun, Jackson, and Roane;
- 61 (5) The counties of Mason and Putnam
- 62 (6) The counties of Cabell and Wayne;
- 63 (7) The counties of McDowell and Wyoming;
- 64 (8) The counties of Logan and Mingo;
- 65 (9) The counties of Kanawha, Lincoln and Boone;
- 66 (10) The county of Raleigh;
- 67 (11) The counties of Mercer, Monroe and Summers;
- 68 (12) The counties of Fayette and Nicholas;

69 (13) The counties of Greenbrier and Pocahontas;

70 (14) The counties of Braxton, Clay, Gilmer and
71 Webster;

72 (15) The counties of Doddridge, Harrison, Lewis and
73 Upshur;

74 (16) The counties of Marion and Taylor;

75 (17) The counties of Monongalia and Preston;

76 (18) The counties of Barbour, Randolph and Tucker;

77 (19) The counties of Grant, Hampshire, Hardy,
78 Mineral and Pendleton; and

79 (20) The counties of Berkeley, Jefferson and Morgan.

80 The governor shall appoint two masters to the office
81 of the family law master for the area of Kanawha,
82 Lincoln and Boone counties. In each of the other areas
83 defined by this subsection, the governor shall appoint
84 one person as family law master for such area.

85 (i) Circuit court or the chief judge thereof shall refer
86 to the master the following matters for hearing to be
87 conducted in accordance with the provisions of section
88 two of this article:

89 (1) Actions to obtain orders of support brought under
90 the provisions of section one, article five of this chapter;

91 (2) All actions to establish paternity under the
92 provisions of article six of this chapter except such
93 actions wherein either or both of the parties have
94 demanded a trial by jury of the law and the facts by
95 the circuit court;

,96 (3) All motions for child or spousal support pendente
97 lite;

98 (4) All actions and motions wherein child custody or
99 child visitation is in issue;

100 (5) All petitions for modification of an order involving
101 child custody, child visitation or child support or spousal
102 support; and

103 (6) All uncontested divorce actions wherein the

104 defending party has failed to answer or appear, or
105 having made an appearance has filed an answer
106 admitting irreconcilable differences or grounds for
107 divorce, has withdrawn his or her answer or other
108 responsive pleading, or has filed a notice of waiver of
109 further proceedings, and wherein all issues except the
110 question of whether or not a divorce should be granted
111 have been resolved;

112 (7) On and after the first day of September, one
113 thousand nine hundred eighty-six, all contested divorce
114 actions.

115 (j) A master shall hear, in addition to the matters
116 described in subsection (i) of this section, such other
117 domestic relation matters as may be referred to the
118 master by the court: *Provided*, That a master shall not
119 hear a case wherein an obligor is charged with criminal
120 contempt, when such obligor has not waived his right
121 to trial by jury.

122 (k) The fees for hearings before a master shall be paid
123 prior to the hearing in question unless a party is excused
124 from payment thereof under the provisions of section
125 one, article two, chapter fifty-nine of this code.

126 (l) Fees for hearings before a master shall be taxed
127 as court costs which costs may be assessed against either
128 party or between the parties, in the discretion of the
129 master. The assessment of court costs shall be included
130 as findings in each case of a master's order. The fees
131 for hearings before a master shall be as follows:

132 (1) For an action to establish an order of support, fifty
133 dollars;

134 (2) For an action to establish paternity, one hundred
135 dollars;

136 (3) For a motion for child or spousal support pendente
137 lite, fifty dollars;

138 (4) For an action to establish custody or visitation,
139 fifty dollars;

140 (5) For a petition for modification of an order
141 involving child custody, child visitation, child support or

142 spousal support, fifty dollars;

143 (6) For an uncontested divorce action, one hundred
144 dollars.

145 (7) For a final hearing in a contested divorce action,
146 thirty dollars per hour.

147 (m) Persons entitled to notice of a master's hearing
148 shall be timely informed of:

149 (1) The time, place and nature of the hearing;

150 (2) The legal authority and jurisdiction under which
151 the hearing is to be held; and

152 (3) The matters of fact and law asserted.

153 (n) The master shall give all interested parties
154 opportunity for the submission and consideration of
155 facts, arguments, offers of settlement or proposals of
156 adjustment when time, the nature of the proceedings
157 and the public interest permit. To the extent that the
158 parties are unable to determine a controversy by
159 consent, the master shall provide the parties a hearing
160 and decision in accordance with the provisions of
161 sections two and three of this article.

162 (o) The master who presides at a hearing pursuant to
163 section two of this article shall enter a master's final
164 order as required by section four of this article. Except
165 to the extent required for disposition of ex parte matters
166 as authorized by this chapter, a master may not consult
167 a person or party on a fact in issue, unless on notice and
168 opportunity for all parties to participate; nor shall the
169 master attempt to supervise or direct an employee or
170 agent engaged in the performance of investigative or
171 prosecuting functions for a prosecuting attorney, the
172 department of human services or any other agency or
173 political subdivision of this state.

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§48-4-2. ^AHearing procedures.

1 (a) This section applies, according to the provisions
2 thereof, to hearings required by section one of this
3 article to be conducted in accordance with this section.

4 (b) A master appointed under the provisions of section

5 one of this article shall preside at the hearing. The
6 functions of the master shall be conducted in an
7 impartial manner. A master may at any time disqualify
8 himself or herself. Upon such disqualification, or upon
9 the filing in good faith of a timely and sufficient
10 affidavit of personal bias or other disqualification of a
11 master, the circuit court or the chief judge thereof may
12 appoint a temporary master or the circuit court may
13 receive the evidence and determine the matter.

14 (c) A master presiding at a hearing under the
15 provisions of this chapter may:

16 (1) Administer oaths and affirmations, compel the
17 attendance of witnesses and the production of docu-
18 ments, examine witnesses and parties, and otherwise
19 take testimony and establish a record.

20 (2) Rule on offers of proof and receive relevant
21 evidence;

22 (3) Take depositions or have depositions taken when
23 the ends of justice may be served;

24 (4) Regulate the course of the hearing;

25 (5) Hold conferences for the settlement or simplifica-
26 tion of issues by consent of the parties;

27 (6) Dispose of procedural requests or similar matters;

28 (7) Accept voluntary acknowledgements of support
29 liability or paternity;

30 (8) Accept stipulated agreements;

31 (9) Prepare default orders for entry if the person
32 against whom an action is brought does not respond to
33 notice or process within the time required;

34 (10) Enter master's final orders in accordance with
35 the provisions of this article; and

36 (11) Take other action authorized by general order of
37 the circuit court or the chief judge thereof consistent
38 with this chapter.

39 (d) Except as otherwise provided by law, a moving
40 party has the burden of proof on a particular question

41 presented. Any oral or documentary evidence may be
42 received, but the master shall exclude irrelevant,
43 immaterial, or unduly repetitious evidence. A party is
44 entitled to present his or her case or defense by oral or
45 documentary evidence, to submit rebuttal evidence, and
46 to conduct such cross-examination as may be required
47 for a full and true disclosure of the facts. In determining
48 claims for money due or the amount of payments to be
49 made, when a party will not be prejudiced thereby, the
50 master may adopt procedures for the submission of all
51 or part of the evidence in written form.

52 (e) Hearings before a master shall be recorded
53 electronically. When requested by either of the parties,
54 a master shall make a transcript, verified by oath, of
55 each hearing held. Unless otherwise ordered by the
56 master, the cost of preparing a transcript shall be
57 apportioned equally between the parties.

58 (f) The recording of the hearing or the transcript of
59 testimony, as the case may be, and the exhibits, together
60 with all papers and requests filed in the proceeding,
61 constitute the exclusive record for decision in accor-
62 dance with section three of this article, and on payment
63 of lawfully prescribed costs, unless excused, shall be
64 made available to the parties. When a master's final
65 order rests on official notice of a material fact not
66 appearing in the evidence in the record, a party is
67 entitled, on timely request, to an opportunity to show the
68 contrary.

§48A-4-3. Default orders; temporary orders.

1 (a) In any proceeding in which the amount of support
2 is to be established, if the obligor has been served with
3 notice of a hearing before a master and does not enter
4 an appearance, the family law master shall enter a
5 master's final order which shall fix support in an
6 amount at least equal to the amount paid as public
7 assistance under section four, article three, chapter nine
8 of this code if the obligee or custodian receives public
9 assistance, or in an amount at least equal to the amount
10 that would be paid as public assistance where the
11 obligee or custodian does not receive public assistance,

12 unless the family law master has information by which
13 to determine the amount to be fixed in the default order
14 in accordance with the child support guidelines.

15 (b) A master who presides at a hearing under the
16 provisions of section two of this article is authorized to
17 enter interlocutory orders and temporary support orders
18 which, when entered, shall be enforceable and have the
19 same force and effect under law as a final order,
20 judgment or decree of the circuit court. Such orders
21 shall not be reviewable by the circuit court except upon
22 a petition for review of a master's final order entered
23 in the matter.

24 (c) All orders prepared by a master shall provide for
25 automatic withholding from income of the obligor if
26 arrearages in support occur, if no such provision already
27 exists in prior orders.

§48A-4-4. Master's final orders.

1 (a) This section applies, according to the provisions
2 thereof, when a hearing has been conducted in accor-
3 dance with section two of this article.

4 (b) A master who has presided at the hearing
5 pursuant to section two of this article shall enter with
6 the clerk of the court a master's final order. Before the
7 master's final order is entered, the master may, in his
8 discretion, require the parties to submit proposed
9 findings and conclusions and the supporting reasons
10 therefore.

11 (c) A copy of each report, recommendation, and any
12 supporting documents or a summary of supporting
13 documents, prepared or used by the children's advocate
14 or an employee of the child advocate office, and all
15 documents introduced into evidence before the master,
16 shall be made available to the attorney for each party
17 and to each of the parties after the master has concluded
18 the reception of evidence. In a child custody dispute the
19 parties shall be informed of whether a custody prefer-
20 ence expressed by the child was considered, evaluated,
21 and determined by the court, but the parties shall not
22 be informed of the preference expressed by the child.

23 If a guardian is appointed for a child, the guardian shall
24 be informed whether a custody preference expressed by
25 the child was considered, evaluated, and determined by
26 the court, and, if so, the preference expressed. The
27 manner and time within which this material is made
28 available shall be determined by supreme court rule.

29 (d) All master's final orders shall include a statement
30 of findings and conclusions, and the reasons or basis
31 therefor, on all the material issues of fact, law, or
32 discretion presented on the record and shall embody the
33 appropriate sanction, relief, or denial thereof.

34 (e) A master's final order shall be fully enforceable
35 upon entry by the master. If no petition for review is
36 timely filed as otherwise provided for in this article, the
37 master shall prepare a final order for entry by the court,
38 which such final order may either affirm the master's
39 final order or may set forth the terms of the master's
40 final order. If the circuit court shall fail to enter such
41 order, the master's final order shall continue to be of full
42 force and effect and shall be fully enforceable as though
43 such order had been entered by the court.

**§48A-4-5. Circuit court review of master's action or
master's final order.**

1 A person who alleges that he or she will suffer a legal
2 wrong because of the action of a master, or will be
3 adversely affected or aggrieved by a master's final
4 order, is entitled to review of the proceedings. The
5 master's final order is the subject of review by the
6 circuit court, and a preliminary or procedural action or
7 ruling not directly reviewable is subject to review only
8 upon the review of the master's final order by the circuit
9 court.

§48A-4-6. Procedure for review by circuit court.

1 (a) Within ten days after the entry of a master's final
2 order, any party may file exceptions thereto in a petition
3 requesting that the action be reviewed by the circuit
4 court upon the master's report. At the time of filing the
5 petition, a copy of the petition for review shall be served
6 on all parties to the proceeding, in the same manner as

7 pleadings subsequent to an original complaint are
8 served under rule five of the rules of civil procedure for
9 trial courts of record.

10 (b) Not more than ten days after the filing of the
11 petition for review, a responding party wishing to file
12 a cross-petition that would otherwise be untimely may
13 file, with proof of service on all parties, a cross-petition
14 for review.

§48A-4-7. Form of petition for review.

1 The petition for review shall contain, in the order
2 indicated:

3 (a) A table of contents and table of authorities.

4 (b) A list of exceptions in the form of questions
5 presented for review, expressed in the terms and
6 circumstances of the case but without unnecessary
7 detail. The statement of questions should be short and
8 concise and should not be argumentative or repetitious.
9 The statement of a question presented will be deemed
10 to comprise every subsidiary question fairly included
11 therein. Only the questions set forth in the petition or
12 fairly included therein will be considered by the court.

13 (c) Citations for the constitutional provisions, statutes
14 and regulations which the case involves.

15 (d) A concise statement of the case containing the facts
16 material to a consideration of the questions presented.

17 (e) A direct and concise argument amplifying the
18 reasons relied upon for remanding the case.

§48A-4-8. Brief in opposition to a petition for review.

1 (a) A respondent shall have ten days after the filing
2 of a petition within which to file an opposing brief
3 disclosing any matter or ground why the master's final
4 order should not be remanded by the court.

5 (b) No motion by a respondent to dismiss a petition
6 for review will be received.

7 (c) Within seven days after the filing of a brief in
8 opposition, a reply brief addressed to arguments first

9 raised in the brief in opposition may be filed by any
10 petitioner.

11 (d) Any party may file a supplemental brief at
12 anytime while a petition for review is pending, calling
13 attention to new cases or legislation or other intervening
14 matter not available at the time of the party's last filing.

§48-4-9. Circuit court review of master's final order.

1 (a) The circuit court shall proceed to a review of the
2 master's final order when a petition has been filed
3 within ten days of the entry of a master's final order;

4 (b) To the extent necessary for decision and when
5 presented, the circuit court shall decide all relevant
6 questions of law, interpret constitutional and statutory
7 provisions, and determine the appropriateness of the
8 terms of the master's final order.

9 (c) If a petition for review has been timely filed, the
10 circuit court shall examine the master's final order, and
11 may enter an order affirming the master's final order
12 or may remand the case upon a finding that the master's
13 final order is:

14 (1) Arbitrary, capricious, an abuse of discretion, or
15 otherwise not in conformance with the law;

16 (2) Contrary to constitutional right, power, privilege,
17 or immunity;

18 (3) In excess of statutory jurisdiction, authority, or
19 limitations, or short of statutory right;

20 (4) Without observance of procedure required by law; or

21 (5) Unsupported by substantial evidence.

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22 (d) In making its determinations under this section,
23 the circuit court shall review the whole record or those
24 parts of it cited by a party.

25 (e) The order of the circuit court affirming or
26 remanding shall be entered not later than twenty-one
27 days after the time for filing pleading or briefs has
28 expired.

29 (f) If a case is remanded by the circuit court, the

30 master shall promptly retry the matter.

**ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT
OBLIGATIONS AND VISITATION.**

**§48A-5-1. Action to obtain an order for support of minor
child.**

1 (a) An action may be brought in circuit court to obtain
2 an order for the support of a minor child when:

3 (1) Such child has a parent and child relationship with
4 an obligor;

5 (2) Such obligor is not the primary caretaker or
6 guardian of the child;

7 (3) The obligor is not meeting an obligation to support
8 the child;

9 (4) An enforceable order for the support of the child
10 by the obligor has not been entered by a court of
11 competent jurisdiction; and

12 (5) There is no pending action for divorce, separate
13 maintenance, or annulment in which the obligation of
14 support owing from the obligor to the child is at issue.

15 (b) An action may be brought under the provisions of
16 subsection (a) of this section by:

17 (1) A custodial parent of a child, when the divorce
18 order or other order which granted custody did not
19 make provision for the support of the child by the
20 obligor;

21 (2) A primary caretaker of a child;

22 (3) A guardian of the property of a child or the
23 committee for a child; or

24 (4) The department of human services, when the
25 department is providing assistance on behalf of the child
26 in the form of aid to families with dependent children,
27 and an assignment of any right to support has been
28 assigned to the department.

29 (c) An action under the provisions of this section may
30 be brought in the county where the obligee, the obligor
31 or the child resides.

32 (d) If an action for child support is brought under the
33 provisions of this section by an obligee against his or her
34 spouse, such obligee may also seek spousal support from
35 the obligor, unless such support has been previously
36 waived by agreement or otherwise.

37 (e) On and after the effective date of this section, every
38 order issued or modified under the provisions of this
39 section shall include a provision for automatic withhold-
40 ing from income of the obligor if arrearages occur, in
41 order to facilitate income withholding as a means of
42 collecting support when such arrearages occur. Each
43 such order shall contain language authorizing income
44 withholding to commence without further court action,
45 under the following conditions:

46 (1) If the order requires payments to be made in
47 monthly installments, when the support payments
48 required by such order are thirty days or more in
49 arrears;

50 (2) If the order requires payments to be made in
51 weekly or bi-weekly installments, when the support
52 payments required by such order are twenty-eight days
53 or more in arrears; or

54 (3) If the obligor requests the child advocate office to
55 commence income withholding.

56 (f) At any time after the entry of an order for support,
57 the court may, upon the verified petition of an obligee
58 or the obligor, revise or alter such order, and make a
59 new order, as the altered circumstances or needs of a
60 child, an obligee, or the obligor may render necessary
61 to meet the ends of justice.

**§48A-5-2. Arrearages; enforcement through writ of
execution, suggestion or suggestee execution.**

1 (a) When an obligor is in arrears in the payment of
2 support which is required to be paid by the terms of an
3 order entered or modified by a court of competent
4 jurisdiction, an obligee may file an "Affidavit of
5 Accrued Support" with the clerk of the circuit court,
6 setting forth the particulars of such arrearage, and
7 requesting a writ of execution, suggestion or suggestee

8 execution. If the duty of support is based upon a foreign
9 support order, the obligee shall first register the foreign
10 support order with the clerk in the same manner as such
11 orders are registered in actions under the revised
12 uniform reciprocal enforcement of support act, sections
13 thirty-four, thirty-five, thirty-seven, and thirty-eight,
14 article seven of this chapter: *Provided*, That a copy of
15 the reciprocal enforcement of support law of the state
16 in which the order was made need not be filed with the
17 clerk.

18 (b) The affidavit may be filed in the county wherein
19 the obligee or the obligor resides, or where the obligor's
20 source of income is located.

21 (c) The affidavit may be filed when a payment
22 required by such order has been delinquent, in whole
23 or in part, for a period of fourteen days.

24 (d) The affidavit shall:

25 (1) Identify the obligee and obligor by name and
26 address, and shall list the obligor's social security
27 number or numbers, if known;

28 (2) Name the court which entered the support order
29 and set forth the date of such entry;

30 (3) State the total amount of accrued support which
31 has not been paid by the obligor;

32 (4) List the date or dates when support payments
33 should have been paid but were not, and the amount of
34 each such delinquent payment; and

35 (5) If known, the name and address of the obligor's
36 source of income.

37 (e) Upon receipt of the affidavit, the clerk shall issue
38 a writ of execution, suggestion or suggestee execution,
39 and shall mail a copy of the affidavit and a notice of the
40 filing of the affidavit to the obligor, at his last known
41 address. If the childrens' advocate is not acting on behalf
42 of the obligee in filing the affidavit, the clerk shall
43 forward a copy of the affidavit and the notice of the
44 filing to the childrens' advocate.

45 (f) The notice provided for in subsection (e) of this
46 section shall inform the obligor that if he or she desires
47 to contest the affidavit on the grounds that the amount
48 claimed to be in arrears is incorrect or that a writ of
49 execution, suggestion or suggestee execution is not
50 proper because of mistakes of fact, he or she must,
51 within fourteen days of the date of the notice, inform the
52 childrens' advocate in writing of the reasons why the
53 affidavit is contested and must request a meeting with
54 the childrens' advocate.

55 (g) Upon being informed by an obligor that he or she
56 desires to contest the affidavit, the childrens' advocate
57 shall inform the court of such fact, and the court shall
58 require the obligor to give security, post a bond, or give
59 some other guarantee to secure payment of overdue
60 support.

61 (h) The clerk of the circuit court shall make available
62 form affidavits for use under the provisions of this
63 section. Such form affidavits shall be provided to the
64 clerk by the child advocate office. The notice of the filing
65 of an affidavit shall be in a form prescribed by the child
66 advocate office.

**§48A-5-3. Withholding from income of amounts payable
as support.**

1 (a) An order which provides for the withholding of
2 amounts payable as support shall be enforced by the
3 childrens' advocate in accordance with the provisions of
4 this section. Every support order entered by a circuit
5 court or a magistrate of this state prior to the effective
6 date of this section and every support order entered by
7 a court of competent jurisdiction of another state shall
8 be considered to provide for an order of income
9 withholding by operation of law, notwithstanding the
10 fact that such support order does not in fact provide for
11 such an order of withholding. Under such orders,
12 income withholding shall be implemented under the
13 same circumstances and enforced in the same manner
14 as in the case of orders of withholding which are
15 included in support orders entered after the effective
16 date of this section.

17 (b)(1) When required to pursue the enforcement of an
18 order of support through the withholding of income in
19 accordance with the provisions of subsection (d), section
20 three, article three of this chapter, the childrens'
21 advocate shall cause the mailing of a notice pursuant to
22 this section when the support payments required by the
23 order are in arrears a specific number of days, as
24 follows:

25 (A) If the order requires support to be paid in monthly
26 installments, the notice shall be sent on the day when
27 the support payments are thirty days in arrears; or

28 (B) If the order requires support to be paid in weekly
29 or bi-weekly installments, the notice shall be sent on the
30 day when the support payments are twenty-eight days
31 in arrears.

32 (2) The number of days support payments are in
33 arrears shall be considered to be the total cumulative
34 number of days during which payments required by a
35 court order have been delinquent, whether or not such
36 days are consecutive.

37 (c) When the required payments are in arrears the
38 requisite number of days in a case, the childrens'
39 advocate shall immediately do the following:

40 (1) If there is an existing support order which has
41 been entered by a court of competent jurisdiction so that
42 withholding can occur without the need for any amend-
43 ment to the support order or for any further action by
44 a court, the childrens' advocate shall send the notice
45 prescribed by the provisions of subsection (d) of this
46 section; or

47 (2) If there is no existing support order upon which
48 withholding can be based, either by its terms or by
49 operation of law, the childrens' advocate shall commence
50 an action to obtain a support order in accordance with
51 the provisions of section one of this article, so as to
52 establish a support order which provides for
53 withholding.

54 (d) If notice required by subsection (b) of this section
55 is appropriate, the childrens' advocate shall determine

56 the time for a meeting between the obligor and the
57 childrens' advocate and the time for a hearing before the
58 family law master, and shall then set forth in such
59 notice the times and places at which the meeting and
60 hearing will be held if withholding is contested. The
61 meeting and hearing may be scheduled on the same
62 date, but in no case shall the meeting with the advocate
63 be scheduled less than fifteen days after the date the
64 notice is mailed nor shall the hearing before the master
65 be scheduled more than twenty-one days after the date
66 the notice is mailed. The childrens' advocate shall send
67 such notice by first class mail to the delinquent obligor.
68 The notice shall inform the delinquent obligor of the
69 following:

70 (1) The amount owed;

71 (2) That it is proposed that there be withholding from
72 the obligor's income of amounts payable as support, and
73 that if withholding is uncontested, or is contested but
74 determined appropriate, the amount withheld will be
75 equal to the amount required under the terms of the
76 current support order, plus amounts for any outstanding
77 arrearages;

78 (3) An identification of the type or types of income
79 from which amounts payable as support will be with-
80 held, and a statement of the amounts proposed to be
81 withheld, expressed in meaningful terminology such as
82 dollar amounts or a percentage of disposable earnings,
83 as may be appropriate for the type of income involved;

84 (4) That the withholding will apply to the obligor's
85 present source of income and to any future source of
86 income.

87 (5) That any action by the obligor to purposefully
88 minimize his or her income will result in the enforce-
89 ment of support being based upon potential and not just
90 actual earnings;

91 (6) That payment of the arrearage after the date of
92 the notice is not a bar to such withholding;

93 (7) That if the obligor wishes to agree to withholding
94 that he or she should notify the childrens' advocate, in

95 writing, within fourteen days from the date of the notice
96 in order to cancel a scheduled meeting with the office
97 of the childrens' advocate and a hearing with the family
98 law master;

99 (8) That if the obligor fails to respond to the notice
100 or fails to appear at the meeting or hearing after
101 responding to the notice, withholding will automatically
102 occur as described in the notice;

103 (9) That if the obligor desires to contest the withhold-
104 ing on the grounds that the amount to be withheld is
105 incorrect or that withholding is not proper because of
106 mistakes of fact, he or she must, within fourteen days
107 of the date of the notice, inform the childrens' advocate
108 in writing of the reasons why the proposed withholding
109 is contested;

110 (10) That a mistake of fact exists only when there is
111 an error in the amount of current or overdue support
112 claimed in the notice, there is a mistake as to the
113 identity of the obligor, or the amount of the proposed
114 withholding exceeds the amount permitted to be
115 withheld under applicable federal or state law; ~~and~~

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116 (11) That matters such as lack of visitation,
117 inappropriateness of the support award, or changed
118 financial circumstances of the obligee or the obligor will
119 not be considered at any hearing held pursuant to the
120 notice, but may be raised by the filing of a separate
121 petition.

122 (12) That if the obligor contests the withholding, in
123 writing, a meeting with the childrens' advocate will be
124 held at a time and place set forth in the notice, for the
125 purpose of attempting to settle any issues which are
126 contested;

127 (13) That if the meeting with the childrens' advocate
128 fails to resolve the issues being contested, a hearing
129 before the family law master will be held at a time and
130 place set forth in the notice, and that following such
131 hearing, the master will enter a master's final order; ~~and~~

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132 (14) That a master's final order as to withholding will
133 become effective when it is entered by the master, and

134 that if the obligor disagrees with the master's final
135 order, he or she will be given the opportunity to make
136 objections known to the circuit court.

137 (f) After a final determination that withholding should
138 occur, the children's advocate shall proceed to withhold
139 so much of the obligor's income as is necessary to comply
140 with the order authorizing such withholding, up to the
141 maximum amount permitted under applicable law.
142 Such withholding, unless otherwise terminated under
143 the provisions of this section, shall apply to any
144 subsequent source of income or any subsequent period
145 of time during which income is received by the obligor.

146 (g) The amount of an obligor's aggregate disposable
147 earnings for any given workweek which can be withheld
148 as support payments is to be determined in accordance
149 with the provisions of this subsection, as follows:

150 (1) After ascertaining the status of the payment record
151 of the obligor under the terms of the support order, the
152 payment record shall be examined to determine whether
153 any arrearages are due for amounts which should have
154 been paid prior to a twelve week period which ends with
155 the workweek for which withholding is sought to be
156 enforced.

157 (2) If none of the withholding is for amounts which
158 came due prior to such twelve week period, then:

159 (A) When the obligor is supporting another spouse or
160 dependent child other than the spouse or child for whom
161 the proposed withholding is being sought, the amount
162 withheld may not exceed fifty percent of the obligor's
163 disposable earnings for that week; and

164 (B) When the obligor is not supporting another spouse
165 or dependent child as described in paragraph (A) of this
166 subdivision, the amount withheld may not exceed sixty
167 percent of the obligor's disposable earnings for that
168 week.

169 (3) If a part of the withholding is for amounts which
170 came due prior to such twelve week period, then:

171 (A) Where the obligor is supporting another spouse or

172 dependent child other than the spouse or child for whom
173 the proposed withholding is being sought, the amount
174 withheld may not exceed fifty—five percent of the
175 obligor's disposable earnings for that week; and

176 (B) Where the obligor is not supporting another spouse
177 or dependent child as described in paragraph (A) of this
178 subdivision, the amount withheld may not exceed sixty-
179 five percent of the obligor's disposable earnings for that
180 week.

181 (4) In addition to the percentage limitations set forth
182 in subdivisions (2) and (3) of this subsection, it shall be
183 a further limitation that in no case shall the total
184 amounts withheld for current payments plus arrearages
185 exceed the amounts withheld for current payments by
186 an amount greater than ten percent of the obligor's
187 disposable income.

188 (5) The provisions of this subsection shall apply
189 directly to the withholding of disposable earnings of an
190 obligor regardless of whether the obligor is paid on a
191 weekly, biweekly, monthly or other basis.

192 (6) If an obligor acts so as to purposefully minimize
193 his or her income and to thereby circumvent the
194 provisions of this section which provide for withholding
195 from income of amounts payable as support, the amount
196 to be withheld as support payments may be based upon
197 the obligor's potential earnings rather than his or her
198 actual earnings, and such obligor may not rely upon the
199 percentage limitations set forth in this subsection which
200 limit the amount to be withheld from disposable
201 earnings.

202 (h) The source of income of any obligor who is subject
203 to withholding, upon being given notice of withholding,
204 shall withhold from such obligor's income the amount
205 specified by the notice and pay such amount to the child
206 advocate office for distribution in accordance with the
207 provisions of section four, article three of this chapter.
208 The notice given to the source of income shall contain
209 only such information as may be necessary for the
210 source of income to comply with the withholding order.
211 Such notice to the source of income shall include, at a

212 minimum, the following:

213 (1) The amount to be withheld from the obligor's
214 income, and a statement that the amount to be withheld
215 for support and other purposes, including the fee
216 specified under subdivision (3) of this subsection, may
217 not be in excess of the maximum amounts permitted
218 under section 303(b) of the Federal Consumer Credit
219 Protection Act or limitations imposed under the provi-
220 sions of this code;

221 (2) That the source of income must send the amount
222 to be withheld from the obligor's income to the child
223 advocate office within ten days of the date the obligor
224 is paid;

225 (3) That, in addition to the amount withheld under the
226 provisions of subdivision (1) of this section, the source
227 of income may deduct a fee, not to exceed fifty cents,
228 for administrative costs incurred by the source of
229 income, for each withholding;

230 (4) That withholding is binding on the source of
231 income until further notice by the child advocate office;

232 (5) That the source of income is subject to a fine for
233 discharging an obligor from employment, refusing to
234 employ, or taking disciplinary action against any obligor
235 because of the withholding;

236 (6) That if the source of income fails to withhold
237 income in accordance with the provisions of the notice,
238 the source of income is liable for the accumulated
239 amount the source of income should have withheld from
240 the obligor's income;

241 (7) That the withholding under the provisions of this
242 section shall have priority over any other legal process
243 under the laws of this state against the same income;

244 (8) That the source of income may combine withheld
245 amounts from obligors' income in a single payment to
246 the child advocate office and separately identify the
247 portion of the single payment which is attributable to
248 each obligor;

249 (9) That the source of income must implement

250 withholding no later than the first pay period or first
251 date for payment of income that occurs after fourteen
252 days following the date the notice to the source of income
253 was mailed; and

254 (10) That the source of income must notify the child
255 advocate office promptly when the obligor terminates
256 his or her employment or otherwise ceases receiving
257 income from the source of income, and must provide the
258 obligor's last known address and the name and address
259 of the obligor's new source of income, if known.

260 (i) The director shall, by administrative rule, establish
261 procedures for promptly refunding to obligors amounts
262 which have been improperly withheld under the
263 provisions of this section.

264 (j) A source of income must send the amount to be
265 withheld from the obligor's income to the child advocate
266 office within ten days of the date the obligor is paid.

267 (k) In addition to any amounts payable as support
268 withheld from the obligor's income, the source of income
269 may deduct a fee, not to exceed fifty cents, for administrative costs incurred by the source of income, for
270 each withholding.
271

272 (l) Withholding of amounts payable as support under
273 the provisions of this section is binding on the source of
274 income until further notice by the child advocate office.

275 (m) Every source of income who receives a notice of
276 withholding under the provisions of this section shall
277 implement withholding no later than the first pay
278 period or first date for the payment of income which
279 occurs after fourteen days following the date the notice
280 to the source of income was mailed.

281 (n) A source of income who employs or otherwise pays
282 income to an obligor who is subject to withholding under
283 the provisions of this section must notify the child
284 advocate office promptly when the obligor terminates
285 employment or otherwise ceases receiving income from
286 the source of income, and must provide the office with
287 the obligor's last known address and the name and
288 address of the obligor's new source of income, if known.

289 (o) A source of income who has more than a single
290 obligor who is subject to withholding from income under
291 the provisions of this article may combine all withheld
292 amounts into a single payment to the child advocate
293 office, with the portion thereof which is attributable to
294 each obligor being separately designated.

295 (p) A source of income is liable to an obligee, including
296 the state of West Virginia or the department of human
297 services where appropriate, for any amount which the
298 source of income fails to withhold from income due an
299 obligor following receipt by such source of income of
300 proper notice under subsection (h): *Provided*, That a
301 source of income shall not be required to vary the
302 normal pay and disbursement cycles in order to comply
303 with the provisions of this section.

304 (q) Support collection under the provisions of this
305 article shall have priority over any other legal process
306 under state law against the same wages.

307 (r) Any source of income who discharges from
308 employment, refuses to employ, or takes disciplinary
309 action against any obligor subject to income withholding
310 required by this section because of the existence of such
311 withholding and the obligations or additional obligations
312 which it imposes on the source of income, shall be guilty
313 of a misdemeanor, and, upon conviction thereof, shall be
314 fined not less than five hundred dollars or more than
315 one thousand dollars.

316 (s) At any time following a period of eighteen months
317 during which the obligor has owed no arrearages to the
318 obligee or to the state of West Virginia or any other
319 state, if the obligee and obligor agree to the termination
320 of withholding and demonstrate to the childrens'
321 advocate that there is a reliable alternative method by
322 which to make the support payments, they may request
323 the childrens' advocate to terminate withholding and
324 such withholding from income may cease until such
325 time as further withholding is required by law. The
326 director of the child advocate office shall, by legislative
327 rule, establish state termination standards which will
328 ensure, at a minimum, that withholding will not be

329 terminated where there are indications that it is
330 unlikely that support will continue without such
331 withholding. The mere fact that all arrearages have
332 been paid shall not be a sufficient ground for the
333 termination of withholding.

**§48A-5-4. Liens against real and personal property for
overdue support.**

1 An order for support entered by a court of competent
2 jurisdiction will give rise to a lien imposed against real
3 and personal property for amounts of overdue support
4 owed by an obligor who resides or owns property within
5 this state when the provisions of section seventeen,
6 article two, chapter forty-eight of this code have been
7 complied with: *Provided*, That a foreign order shall first
8 be registered as a foreign support order with the clerk
9 in the same manner as such orders are registered in
10 actions under the revised uniform reciprocal
11 enforcement of support act, sections thirty-five, thirty-
12 ~~six~~, ^{five} ~~thirty-eight~~, ^{seven} ~~and thirty-nine~~, ^{article} article seven of this
13 chapter: *Provided*, That a copy of the reciprocal
14 enforcement of support law of the state in which the
15 order was made need not be filed with the clerk.

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**§48A-5-5. Enforcement of support orders by contempt
proceedings; penalties.**

1 (a)(1) In addition to or in lieu of the other remedies
2 provided by this article for the enforcement of support
3 orders, the office of the childrens' advocate may
4 commence a civil or criminal contempt proceeding in
5 accordance with the provisions of section twenty-two,
6 article two, chapter forty-eight of this code against an
7 obligor who is alleged to have willfully failed or refused
8 to comply with the order of a court of competent
9 jurisdiction requiring the payment of support. Such
10 proceeding shall be instituted by filing with the circuit
11 court a petition for an order to show cause why the
12 obligor should not be held in contempt.

13 (2) If the court finds that the obligor willfully failed
14 or refused to comply with an order requiring the
15 payment of support, the court shall find the obligor in
16 contempt and may do one or more of the following:

17 (A) Require additional terms and conditions consistent
18 with the court's support order.

19 (B) After notice to both parties and a hearing, if
20 requested by a party, on any proposed modification of
21 the order, modify the order in the same manner and
22 under the same requirements as an order requiring the
23 payment of support may be modified under the provi-
24 sions of subsection (d), section fifteen, article two,
25 chapter forty-eight of this code. A modification sought
26 by an obligor, if otherwise justified, shall not be denied
27 solely because the obligor is found to be in contempt.

28 (C) Order that all accrued support and interest
29 thereon be paid under such terms and conditions as the
30 court, in its discretion, may deem proper.

31 (D) If appropriate under the provisions of section
32 twenty-two, article two, chapter forty-eight of this code:

33 (i) Commit the contemnor to the county jail; or

34 (ii) Commit the contemnor to the county jail with the
35 privilege of leaving the jail, during such hours as the
36 court determines and under such supervision as the
37 court considers necessary, for the purpose of allowing
38 the contemnor to go to and return from his or her place
39 of employment.

40 (3) A commitment under paragraph (D), subdivision
41 (2) of this subsection shall not exceed forty-five days for
42 the first adjudication of contempt or ninety days for any
43 subsequent adjudication of contempt.

44 (4) An obligor committed under paragraph (D),
45 subdivision (2) of this subsection shall be released if the
46 court has reasonable cause to believe that the obligor
47 will comply with the court's orders.

48 (5) If an obligor is committed to jail under the
49 provisions of subparagraph (ii), paragraph (D), subdivi-
50 sion (2) of this subsection and violates the conditions of
51 the court, the court may commit the person to the county
52 jail without the privilege provided under said subpara-
53 graph (ii) for the balance of the period of commitment
54 imposed by the court.

55 (6) If a person is committed to jail under the provi-
56 sions of subparagraph (ii), paragraph (D), subdivision
57 (2) of this subsection and willfully fails to return to the
58 place of confinement within the time prescribed, such
59 person shall be considered to have escaped from custody
60 and shall be guilty of a misdemeanor, punishable by
61 imprisonment for not more than one year.

**§48A-5-6. Posting of bonds or giving security to guaran-
tee payment of overdue support.**

1 (a) An obligor with a pattern of overdue support may
2 be required by order of the master or the court to post
3 bond, give security or some other guarantee to secure
4 payment of overdue support. Said guarantee may include
5 an order requiring that stocks, bonds or other assets of
6 the obligor be held in escrow by the court until the
7 obligor pays the support.

8 (b) No less than fifteen days before such an order may
9 be entered the children's advocate shall cause the
10 mailing of a notice by first class mail to the obligor
11 informing the obligor of the impending action, his or her
12 right to contest it, and setting forth a date, time and
13 place for a meeting with the children's advocate and the
14 date, time and place of a hearing before the family law
15 master if the impending action is contested.

§48A-5-7. Visitation enforcement; contempt; penalties.

1 (a) Except as provided in subsection (b) of this section,
2 the childrens' advocate may do either of the following
3 in a dispute concerning visitation of a minor child:

4 (1) Apply a visitation adjustment policy established in
5 accordance with the provisions of subsection (c) of this
6 section, or

7 (2) Commence contempt proceedings under the
8 provisions of this section.

9 (b) The childrens' advocate shall not invoke either
10 option under subsection (a) of this section if the parties
11 resolve their dispute through an informal joint meeting
12 with the childrens' advocate.

13 (c) Each childrens' advocate may formulate a visita-

14 tion adjustment policy which may be implemented by
15 the childrens' advocate after it is approved by the chief
16 judge of the circuit. Such policy shall be applied to the
17 following visitation violations:

18 (1) Where a noncustodial parent has been wrongfully
19 denied visitation; or

20 (2) Where a custodial parent has had his or her right
21 to custody infringed upon by the actions of a noncusto-
22 dial parent who has abused or exceeded his or her right
23 of visitation.

24 (d) A visitation adjustment policy formulated and
25 approved under the provisions of this section shall
26 include all of the following:

27 (1) An adjustment of visitation shall be applied to the
28 same type and duration of visitation as the visitation
29 that was denied by the custodial parent or exceeded by
30 the noncustodial parent, including but not limited to,
31 weekend visitation for weekend visitation, holiday
32 visitation for holiday visitation, weekday visitation for
33 weekday visitation, and summer visitation for summer
34 visitation.

35 (2) An adjustment of visitation shall be scheduled to
36 occur within thirteen months after the visitation
37 violation occurred.

38 (3) The time of the visitation adjustment shall be
39 chosen by the parent whose right of visitation or custody
40 were violated.

41 (e) If a visitation adjustment policy is formulated and
42 approved under this section, the office of the childrens'
43 advocate shall keep an accurate record of alleged
44 visitation violations reported to the childrens' advocate.
45 A parent claiming a visitation violation shall give to the
46 childrens' advocate a written claim of such alleged
47 visitation violation within seven days after the actions
48 complained of are alleged to have occurred.

49 (f) If a visitation violation is alleged in a county in
50 which a visitation adjustment policy has been formu-
51 lated and approved under this section, the following

52 shall apply:

53 (1) Within five days after receipt of a claim of a
54 visitation violation, the office of the childrens' advocate
55 shall mail to the parent who is alleged to have committed
56 the violation, a notice by first class mail, directed
57 to such person's last known address. The notice shall
58 inform the parent of the following:

59 (A) When the visitation violation is alleged to have
60 occurred;

61 (B) That it is proposed that a visitation adjustment be
62 granted to the complaining parent;

63 (C) That if the parent alleged to have committed the
64 visitation violation wishes to agree to a visitation
65 adjustment he or she must notify the childrens' advocate,
66 in writing, within fourteen days from the date of
67 the notice, and must request a meeting with the
68 childrens' advocate;

69 (D) That if he or she desires to contest the application
70 of the visitation adjustment policy on the grounds that
71 the claim of a visitation violation is incorrect or that a
72 visitation adjustment is not proper because of mistakes
73 of fact, he or she must, within fourteen days of the date
74 of the notice, inform the childrens' advocate in writing
75 of the reasons why the proposed adjustment is contested
76 and must request a meeting with the childrens'
77 advocate.

78 (2) After a final determination as to whether visitation
79 was wrongfully denied by the custodial parent or the
80 right of visitation was exceeded or abused by the
81 noncustodial parent, the office of the childrens' advocate
82 shall adjust the records of visitation violations
83 accordingly.

84 (3) The parent found to be entitled to a visitation
85 adjustment shall give to the office of the childrens'
86 advocate and the other parent a written notice of the
87 time the visitation adjustment will occur. Such notice
88 shall be given at least ten days before a makeup
89 weekday or weekend visitation or at least thirty days
90 before a makeup holiday or makeup summer visitation.

91 (g)(1) Except as provided in subsection (b) of this
92 section, the office of the childrens' advocate may
93 commence a civil or criminal contempt proceeding in
94 accordance with the provisions of section twenty-two,
95 article two, chapter forty-eight of this code to resolve a
96 dispute concerning visitation of a minor child by filing
97 with the circuit court a petition for an order to show
98 cause why the parent alleged to have committed the
99 visitation violation should not be held in contempt.

100 (2) If the court finds that the parent committed the
101 visitation violation, the court shall find the parent in
102 contempt and may do one or more of the following:

103 (A) Require additional terms and conditions consistent
104 with the court's visitation order.

105 (B) After notice to both parties and a hearing, if
106 requested by a party, on any proposed modification of
107 visitation, modify the visitation order to meet the best
108 interests of the child. A modification sought by a parent
109 charged with a visitation violation, if otherwise justified,
110 shall not be denied solely because the parent is found
111 to be in contempt.

112 (C) Order that a visitation adjustment be made.

113 (D) If appropriate under the provisions of section
114 twenty-two, article two, chapter forty-eight of this code:

115 (i) Commit the contemnor to the county jail; or

116 (ii) Commit the contemnor to the county jail with the
117 privilege of leaving the jail, during such hours as the
118 court determines and under such supervision as the
119 court considers necessary, for the purpose of allowing
120 the contemnor to go to and return from his or her place
121 of employment.

122 (3) A commitment under paragraph (D), subdivision
123 (2) of this subsection shall not exceed forty-five days for
124 the first adjudication of contempt or ninety days for any
125 subsequent adjudication of contempt.

126 (4) A parent committed under paragraph (D), subdi-
127 vision (2) of this subsection shall be released if the court
128 has reasonable cause to believe that the parent will

129 comply with the visitation order.

130 (5) If a parent is committed to jail under the provi-
131 sions of subparagraph (ii), paragraph (D), subdivision
132 (2) of this subsection and violates the conditions of the
133 court, the court may commit the person to the county
134 jail without the privilege provided under said subpara-
135 graph (ii) for the balance of the period of commitment
136 imposed by the court.

137 (6) If a person is committed to jail under the provi-
138 sions of subparagraph (ii), paragraph (D), subdivision
139 (2) of this subsection and wilfully fails to return to the
140 place of confinement within the time prescribed, such
141 person shall be considered to have escaped from custody
142 and shall be guilty of a misdemeanor, punishable by
143 imprisonment for not more than one year.

§48A-5-8. Procedures before the childrens' advocate.

1 (a) In any case arising under the provisions of this
2 article wherein a notice is served upon a person
3 requiring him or her to notify the childrens' advocate
4 if the person is contesting action proposed to be taken
5 against him:

6 (1) If the person so notified does not submit written
7 reasons for contesting the action within the time set to
8 contest the proposed action, and does not request a
9 meeting with the childrens' advocate, then the childrens'
10 advocate shall proceed with the proposed action; or

11 (2) If the person so notified does submit written
12 reasons for contesting the action within the time set to
13 contest the proposed action, and requests a meeting with
14 the childrens' advocate, then the childrens' advocate
15 shall schedule a meeting at the earliest practicable time
16 with the person and attempt to resolve the matter
17 informally.

18 (b)(3) If the matter cannot be resolved informally, the
19 childrens' advocate shall make a determination as to
20 whether the proposed action is proper and should
21 actually occur.

22 (c)(4) The determination of the childrens' advocate shall

23 be made within forty-five days from the date of the
24 notice which first apprised the person of the proposed
25 action. Upon making the determination, the childrens'
26 advocate shall inform the obligor as to whether or not
27 the proposed action will occur, and, if it is to occur, of
28 the date on which it is to begin, and in the case of
29 withholding from income, shall furnish the obligor with
30 the information contained in any notice given to an
31 employer under the provisions of subsection (h), section
32 three of this article with respect to such withholding.

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-1. Action for establishment of paternity.

1 A civil action to establish the paternity of a child and
2 to obtain an order of support for the child may be
3 instituted, by verified complaint, in the circuit court of
4 the county where the plaintiff, the defendant or the child
5 resides. Such action may be brought by any of the
6 following persons:

7 (1) An unmarried woman with physical or legal
8 custody of a child to whom she gave birth;

9 (2) A married woman with physical or legal custody
10 of a child to whom she gave birth, if the complaint
11 alleges that:

12 (A) Such married woman lived separate and apart
13 from her husband for a period of one year or more
14 immediately preceding the birth of the child;

15 (B) Such married woman did not cohabit with her
16 husband at any time during such separation and that
17 such separation has continued without interruption; and

18 (C) The defendant, rather than her husband, is the
19 father of the child.

20 (3) Any person, including the state of West Virginia
21 or the department of human services, who is not the
22 mother of the child, but who has physical or legal
23 custody of such child;

24 (4) The guardian or committee of such child; ~~or~~

25 (5) The next friend of such child when the child is a

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26 minor; or

27 (6) By such child in his own right at any time after
28 the child's eighteenth birthday but prior to the child's
29 twenty-first birthday.

§48A-6-2. Statute of limitations; prior statute of limitations not a bar to action under this article; effect of prior adjudication between husband and wife.

1 (a) Except for an action brought by a child in his or
2 her own right under the provisions of subdivision (6),
3 subsection (a), section one of this article, an action for
4 the establishment of the paternity of a child shall be
5 brought prior to such child's eighteenth birthday.

6 (b) An action to establish paternity under the provisions of this article may be brought by or on behalf of
7 a child notwithstanding the fact that, prior to the
8 effective date of this section, an action to establish
9 paternity may have been barred by a prior statute of
10 limitations set forth in this code or otherwise provided
11 for by law.
12

13 (c) Any other provision of law to the contrary
14 notwithstanding, when a husband and wife or former
15 husband and wife, in an action for divorce or an action
16 to obtain a support order, have litigated the issue of the
17 paternity of a child conceived during their marriage to
18 the end that the husband has been adjudged not to be
19 the father of such child, such prior adjudication of the
20 issue of paternity between the husband and the wife
21 shall not preclude the mother of such child from
22 bringing an action against another person to establish
23 paternity under the provisions of this article.

§48A-6-3. Medical testing procedures to aid in the determination of paternity.

1 (a) The court may, on its own motion, or upon the
2 motion of any party, order the mother, her child and the
3 defendant to submit to blood tests or tissue tests to aid
4 the court in proving or disproving paternity. If a such
5 tests are ordered, the court shall direct that the
6 inherited characteristics, including, but not limited to,

7 blood types, be determined by appropriate testing
8 procedures at a hospital, independent medical institu-
9 tion or independent medical laboratory, duly licensed
10 under the laws of this State, or any other state, and shall
11 appoint an expert qualified as an examiner of genetic
12 markers to analyze and interpret the results and to
13 report to the court. The court shall consider the results
14 as follows:

15 (1) Blood or tissue test results which exclude the
16 defendant as the father of the child are admissible and
17 shall be clear and convincing evidence of nonpaternity
18 and the court shall, upon considering such evidence,
19 dismiss the action.

20 (2) Blood or tissue test results which show a statistical
21 probability of paternity of more than seventy-five
22 percent are admissible and shall be weighed along with
23 other evidence of the defendant's paternity.

24 (3) If the results of the blood or tissue tests or the
25 expert's analysis of inherited characteristics is disputed,
26 the court, upon reasonable request of a party, shall order
27 that additional tests be made by the same laboratory or
28 another laboratory at the expense of the party request-
29 ing additional testing.

30 (b) Verified documentation of the chain of custody of
31 the blood or tissue specimens is competent evidence to
32 establish such chain of custody. A verified expert's
33 report shall be admitted at trial unless a challenge to
34 the testing procedures or a challenge to the results of
35 test analysis has been made before trial. The costs and
36 expenses of making such tests shall be paid by the
37 parties in proportions and at times determined by the
38 court.

§48A-6-4. Establishment of paternity and duty of support.

1 If the defendant, by verified responsive pleading shall
2 admit that he is the father of the child and owes a duty
3 of support, or if after a trial on the merits, the court
4 or jury shall find, by clear and convincing evidence that
5 the defendant is the father of the child, the court shall

6 order the defendant to provide support in accordance
7 with the provisions of this chapter.

§48A-6-5. Representation of parties.

1 (a) The childrens' advocate of the county where the
2 action under this section is brought shall represent the
3 plaintiff.

4 (b) The defendant shall be advised of his right to
5 counsel. In the event he files an affidavit that he is a
6 poor person within the meaning of section one, article
7 two, chapter fifty-nine of this code, counsel shall be
8 appointed to represent him. The service and expenses of
9 counsel shall be paid in accordance with the provisions
10 of article twenty-one, chapter twenty-nine of this Code:
11 *Provided*, That the court shall make a finding of
12 eligibility for appointed counsel in accordance with the
13 requirements of said article and, if the person qualifies,
14 any blood or tissue tests ordered to be taken shall be
15 paid as part of the costs of the proceeding.

**ARTICLE 7. REVISED UNIFORM RECIPROCAL ENFORCEMENT
OF SUPPORT ACT.**

§48A-7-1. Purposes.

1 The purposes of this article are to improve and extend
2 by reciprocal legislation the enforcement of duties of
support.

§48A-7-2. Definitions.

1 As used in this article unless the context requires
2 otherwise:

3 (1) "Court" means a circuit court of this state, and,
4 when the context requires, means a court of competent
5 jurisdiction of any other state as defined in a substan-
6 tially similar reciprocal law.

7 (2) "Duty of support" means a duty of support whether
8 imposed or imposable by law or by order, decree or
9 judgment of any court, of competent jurisdiction,
10 whether interlocutory or final, or whether incidental to
11 an action for divorce, separation, separate maintenance
12 or otherwise and includes the duty to pay arrearages of
13 support past due and unpaid.

14 (3) "Governor" includes any person performing the
15 functions of governor or the executive authority of any
16 state covered by this article.

17 (4) "Initiating state" means a state in which a
18 proceeding pursuant to this or a substantially similar
19 reciprocal law is commenced. "Initiating court" means
20 the court in which a proceeding is commenced.

21 (5) "Law" includes both common and statutory law.

22 (6) "Obligee" means, in addition to the meaning
23 ascribed to it in section one, article one of this chapter,
24 a person including a state or political subdivision to
25 whom a duty of support is owed or a person including
26 a state or political subdivision that has commenced a
27 proceeding for enforcement of an alleged duty of
28 support or for registration of a support order. It is
29 immaterial if the person to whom a duty of support is
30 owed is a recipient of public assistance.

31 (7) "Obligor" means, in addition to the meaning
32 ascribed to it in section one, article one of this chapter,
33 any person owing a duty of support or against whom a
34 proceeding for the enforcement of a duty of support or
35 registration of a support order is commenced.

36 (8) "Register" means to record in the registry of
37 foreign support orders.

38 (9) "Registering court" means any court of this state
39 in which a support order of a rendering state is
40 registered.

41 (10) "Rendering state" means a state in which the
42 court has issued a support order for which registration
43 is sought or granted in the court of another state.

44 (11) "Responding state" means a state in which any
45 responsive proceeding pursuant to the proceeding in the
46 initiating state is commenced. "Responding court"
47 means the court in which the responsive proceeding is
48 commenced.

49 (12) "State" includes a state, territory or possessions
50 of the the United States, the District of Columbia, the
51 Commonwealth of Puerto Rico and any foreign jurisdic-

52 tion in which this or a substantially similar reciprocal
53 law is in effect.

54 (13) "Support enforcement officer" means the child-
55 rens' advocate in this state or the prosecuting attorney
56 or other public official in another state who has the duty
57 to enforce criminal or civil laws relating to the failure
58 to provide for the support of any person.

59 (14) "Support order" means any judgment, decree or
60 order of support in favor of an obligee whether tempor-
61 ary or final, or subject to modification, revocation or
62 remission, regardless of the kind of action or proceeding
63 in which it is entered.

§48A-7-3. Remedies cumulative.

1 The remedies herein provided are in addition to and
2 not in substitution for any other remedies.

§48A-7-4. Extent of duties of support.

1 Duties of support arising under the law of this state,
2 when applicable under section seven, bind the obligor
3 present in this state regardless of the presence or
4 residence of the obligee.

§48A-7-5. Interstate rendition.

1 The governor of this state may:

2 (1) Demand of the governor of another state the
3 surrender of a person found in that state who is charged
4 criminally in this state with failing to provide for the
5 support of any person; or

6 (2) Surrender on demand by the governor of another
7 state a person found in this state who is charged
8 criminally in that state with failing to provide for the
9 support of any person. Provisions for extradition of
10 criminals not inconsistent with this article apply to the
11 demand even if the person whose surrender is demanded
12 was not in the demanding state at the time of the
13 commission of the crime and has not fled therefrom. The
14 demand, the oath, and any proceedings for extradition
15 pursuant to this section need not state or show that the
16 person whose surrender is demanded has fled from

17 justice or at the time of the commission of the crime was
18 in the demanding state.

§48A-7-6. Conditions of interstate rendition.

1 (a) Before making the demand upon the governor of
2 another state for the surrender of a person charged
3 criminally in this state with failing to provide for the
4 support of a person, the governor of this state may
5 require any childrens' advocate of this state to satisfy
6 him that at least sixty days prior thereto the obligee
7 initiated proceedings for support under this article or
8 that any proceeding would be of no avail.

9 (b) If, under a substantially similar reciprocal law, the
10 governor of another state makes a demand upon the
11 governor of this state for the surrender of a person
12 charged criminally in that state with failure to provide
13 for the support of a person, the governor may require
14 any childrens' advocate to investigate the demand and
15 to report to him whether proceedings for support have
16 been initiated or would be effective. If it appears to the
17 governor that a proceeding would be effective but has
18 not been initiated he may delay honoring the demand
19 for a reasonable time to permit the initiation of a
20 proceeding.

21 (c) If proceedings have been initiated and the person
22 demanded has prevailed therein the governor may
23 decline to honor the demand. If the obligee prevailed
24 and the person demanded is subject to a support order,
25 the governor may decline to honor the demand if the
26 person demanded is complying with the support order.

**§48A-7-7. Law governing duty of support; presumption
as to presnce of obligor.**

1 Duties of support applicable under this article are
2 those imposed under the laws of any state where the
3 obligor was present for the period during which support
4 is sought. The obligor is presumed to have been present
5 in the responding state during the period for which
6 support is sought until otherwise shown.

**§48A-7-8. Remedies of state or political subdivision
furnishing support.**

1 If a state or a political subdivision furnishes support
2 to an individual obligee it has the same right to initiate
3 a proceeding under this article as the individual obligee
4 for the purpose of securing reimbursement for support
5 furnished and of obtaining continuing support.

§48A-7-9. How duties of support enforced.

1 All duties of support, including the duty to pay
2 arrearages, are enforceable by a proceeding under this
3 article including a proceeding for civil contempt. The
4 defense that the parties are immune to suit because of
5 their relationship as husband and wife or parent and
6 child is not available to the obligor.

§48A-7-10. Jurisdiction.

1 Jurisdiction of any proceeding under this article is
2 vested in courts of record.

**§48A-7-11. Contents and filing of petition for support;
venue.**

1 (a) The petition or complaint shall be verified and
2 shall state the name and, so far as known to the obligee,
3 the address and circumstances of the obligor and the
4 persons for whom support is sought, and all other
5 pertinent information. The obligee may include in or
6 attach to the petition or complaint any information
7 which may help in locating or identifying the obligor
8 including a photograph of the obligor, a description of
9 any distinguishing marks on his person, other names
10 and aliases by which he has been or is known, the name
11 of his employer, his fingerprints and his social security
12 number.

13 (b) The petition or complaint may be filed in the
14 appropriate court of any state in which the obligee
15 resides. The court shall not decline or refuse to accept
16 and forward the petition or complaint on the ground
17 that it should be filed with some other court of this or
18 any other state where there is pending another action
19 for divorce, separation, annulment, dissolution, habeas
20 corpus, adoption or custody between the same parties or
21 where another court has already issued a support order
22 in some other proceedings and has retained jurisdiction

23 for its enforcement.

§48A-7-12. Childrens' advocate to represent obligee.

1 If this state is acting as an initiating state, the
2 childrens' advocate shall represent the obligee in any
3 proceedings under this article.

§48A-7-13. Petition for a minor.

1 A petition or complaint on behalf of a minor obligee
2 may be executed and filed by a person having legal
3 custody of the minor without appointment as guardian
4 ad litem.

§48A-7-14. Duty of initiating court.

1 If the initiating court finds that the petition or
2 complaint sets forth facts from which it may be
3 determined that the obligor owes a duty of support and
4 that a court of the responding state may obtain
5 jurisdiction of the obligor or his property, it shall so
6 certify and cause three copies of the petition or
7 complaint and its certificate and one copy of this article
8 to be sent to the responding court. Certification shall be
9 in accordance with the requirements of the initiating
10 state. If the name and address of the responding court
11 is unknown and the responding state has an information
12 agency comparable to that established in the initiating
13 state it shall cause the copies to be sent to the state
14 information agency or other proper official of the
15 responding state, with a request that the agency or
16 official forward them to the proper court and that the
17 court of the responding state acknowledge their receipt
18 to the initiating court.

§48A-7-15. Costs and fees.

1 An initiating court shall not require payment of either
2 a filing fee or other costs from the obligee, but may
3 request the responding court to collect fees and costs
4 from the obligor. A responding court shall not require
5 payment of a filing fee or other costs from the obligee,
6 but it may direct that all fees and costs requested by
7 the initiating court and incurred in this state when
8 acting as a responding state, including fees for filing of

9 pleadings, service of process, seizure of property,
10 stenographic or duplication service or other service
11 supplied to the obligor, be paid in whole or in part by
12 the obligor. When a circuit court in this state is the
13 responding court and has ordered that the obligor make
14 payments to the childrens' advocate for transmission to
15 the court in an initiating state, the childrens' advocate
16 shall collect from the obligor, in addition to all other fees
17 and costs, a fee equal to one percent of the payment
18 ordered to be paid by the obligor, which fee shall be
19 treated in the manner of all other fees received by the
20 childrens' advocate. Costs or fees do not have priority
21 over amounts due to the obligee.

§48A-7-16. Jurisdiction by arrest.

1 If a circuit court of this state believes that the obligor
2 may flee it may:

3 (1) As an initiating court, request in its certificate that
4 the responding court obtain the body of the obligor by
5 appropriate process; or

6 (2) As a responding court, obtain the body of the
7 obligor by appropriate process. Thereupon it may
8 release him upon his own recognizance or upon his
9 giving a bond in an amount set by the court to assure
10 his appearance at the hearing.

§48A-7-17. State information agency.

1 (a) The office of the child advocate office is designated
2 as the state information agency under this article. It
3 shall:

4 (1) Compile a list of the circuit courts and their
5 addresses in this state and transmit it to the state
6 information agency of every other state which has
7 adopted this or a substantially similar law. Upon the
8 adjournment of each session of the Legislature, the child
9 advocate office shall distribute copies of any amend-
10 ments to this article and a statement of their effective
11 date to all other state information agencies;

12 (2) Maintain a register of lists of courts received from
13 other states and transmit copies thereof promptly to

14 every circuit court in this state; and

15 (3) Forward to the circuit court in this state which has
16 jurisdiction over the obligor or his property petitions,
17 certificates and copies of the act it receives from courts
18 or information agencies of other states.

19 (b) If the child advocate office does not know the
20 location of the obligor or his property in the state, it
21 shall use all means at its disposal to obtain this
22 information, including the examination of official
23 records in the state and other sources such as telephone
24 directories, real property records, vital statistics
25 records, police records, requests for the name and
26 address from employers who are able or willing to
27 cooperate, records of motor vehicle license offices,
28 requests made to the tax offices, both state and federal,
29 where such offices are able to cooperate, and requests
30 made to the social security administration as permitted
31 by the social security act, as amended.

**§48A-7-18. Duty of court and officials of this state as
respondng state.**

1 (a) After a circuit court of this state, acting as the
2 responding court, receives copies of the petition or
3 complaint, certificate and act from the initiating court
4 of another state, the clerk of the circuit court shall
5 docket the case and notify the childrens' advocate of
6 such action.

7 (b) The childrens' advocate shall prosecute the case
8 diligently. He or she shall take all action necessary in
9 accordance with the laws of this state to enable the court
10 to obtain jurisdiction over the obligor or his property
11 and shall request the court to set a time and place for
12 a hearing and give notice thereof to the obligor in
13 accordance with law.

**§48A-7-19. Further duties of court and officials in
responding state.**

1 (a) The childrens' advocate on his or her own initiative
2 shall use all means at his or her disposal to locate the
3 obligor or his or her property, and if because of
4 inaccuracies in the petition or complaint or otherwise

5 the court cannot obtain jurisdiction, the childrens'
6 advocate shall inform the court of what has been done
7 and request the court to continue the case pending
8 receipt of more accurate information or an amended
9 petition or complaint from the initiating court.

10 (b) If the obligor or his or her property is not found
11 in the county, and the childrens' advocate discovers that
12 the obligor or his property may be found in another
13 county of this state or in another state, he shall so inform
14 the court. Thereupon, the clerk of the circuit court shall
15 forward the documents received from the court in the
16 initiating state to a circuit court in the other county or
17 to a court in the other state or to the information agency
18 or other proper official of the other state with a request
19 that the documents be forwarded to the proper court.
20 All powers and duties provided by this article apply to
21 the recipient of the documents so forwarded. If the clerk
22 of a circuit court of this state forwards documents to
23 another court, he or she shall forthwith notify the
24 initiating court.

25 (c) If the childrens' advocate has no information as to
26 the location of the obligor or his or her property, he or
27 she shall so inform the initiating court.

§48A-7-20. Hearing and continuance.

1 If the obligee is not present at the hearing and the
2 obligor denies owing the duty of support alleged in the
3 petition or offers evidence constituting a defense, the
4 court shall upon request of either party, continue the
5 hearing to permit evidence relative to the duty to be
6 adduced by either party by deposition or by appearing
7 in person before the court. The court may designate the
8 judge of the initiating court as a person before whom
9 a deposition may be taken.

§48A-7-21. Evidence of husband and wife.

1 Laws attaching a privilege against the disclosure of
2 communications between husband and wife are inappli-
3 cable to proceedings under this article. Husband and
4 wife are competent witnesses and may be compelled to
5 testify to any relevant matter, including marriage and

6 parentage.

§48A-7-22. Rules of evidence.

1 In any hearing for the civil enforcement of this article,
2 the court is governed by the rules of evidence applicable
3 in a civil action in a court of record. If the action is
4 based on a support order issued by another court of
5 competent jurisdiction a certified copy of the order shall
6 be received as evidence of the duty of support, subject
7 only to any defenses available to an obligor with respect
8 to paternity or to a defendant in an action or a
9 proceeding to enforce a foreign money judgment. The
10 determination or enforcement of a duty of support owed
11 to one obligee is unaffected by any interference by
12 another obligee with rights of custody or visitation
13 granted by a court.

§48A-7-23. Order of support.

1 If the circuit court, acting as a responding court, finds
2 a duty of support, it may order the obligor to furnish
3 support or reimbursement therefor and subject the
4 property of the obligor to the order. Support orders
5 made pursuant to this article shall require that pay-
6 ments be made to the child advocate office. The court
7 and childrens' advocate of any county in which the
8 obligor is present or has property have the same powers
9 and duties to enforce the order as have those of the
10 county in which it was first issued. If enforcement is
11 impossible or cannot be completed in the county in
12 which the order was issued, the childrens' advocate shall
13 send a certified copy of the order to the childrens'
14 advocate of any county in which it appears that
15 proceedings to enforce the order would be effective. The
16 childrens' advocate to whom the certified copy of the
17 order is forwarded shall proceed with enforcement and
18 report the results of the proceedings to the court first
19 issuing the order.

§48A-7-24. Responding court to transmit copies to initiating court.

1 The circuit court, acting as a responding court, shall
2 cause a copy of all support orders to be sent to the

3 initiating court.

§48A-7-25. Additional powers of responding court.

1 In addition to the foregoing powers, a circuit court,
2 acting as responding court, may subject the obligor to
3 any terms and conditions proper to assure compliance
4 with its orders and in particular to:

5 (1) Require the obligor to furnish a cash deposit or a
6 bond of a character and amount to assure payment of
7 any amount due;

8 (2) Require the obligor to report personally and to
9 make payments at specified intervals to the childrens'
10 advocate; and

11 (3) Punish under the power of contempt the obligor
12 who violates any order of the court.

§48A-7-26. Adjudication of issue of paternity.

1 If the obligor asserts as a defense that he is not the
2 father of the child for whom support is sought and it
3 appears to the court that the defense is not frivolous, and
4 if both of the parties are present at the hearing or the
5 proof required in the case indicates that the presence of
6 either or both of the parties is not necessary, the court
7 may adjudicate the paternity issue. Otherwise the court
8 may adjourn the hearing until the paternity issue has
9 been adjudicated.

§48A-7-27. Additional duties of responding court.

1 A circuit court, acting as a responding court, has the
2 following duties which shall be carried out through the
3 childrens' advocate.

4 (1) To transmit to the initiating court any payment
5 made by the obligor pursuant to any order of the court
6 or otherwise; and

7 (2) To furnish to the initiating court upon request a
8 certified statement of all payments made by the obligor.

§48A-7-28. Additional duty of initiating court.

1 A circuit court, acting as an initiating court, shall
2 receive and disburse forthwith all payments made by

3 the obligor or sent by the responding court. This duty
4 shall be carried out through the child advocate office.

**§48A-7-29. Proceedings not to be stayed because of
pending or prior action; support order
pendente lite.**

1 A circuit court, acting as a responding court, shall not
2 stay the proceeding or refuse a hearing under this
3 article because of any pending or prior action or
4 proceeding for divorce, separation, annulment, dissolu-
5 tion, habeas corpus, adoption or custody in this or any
6 other state. The court shall hold a hearing and may issue
7 a support order pendente lite. In aid thereof it may
8 require the obligor to give a bond for the prompt
9 prosecution of the pending proceeding. If the other
10 action or proceeding is concluded before the hearing in
11 the instant proceeding and the judgment therein
12 provides for the support demanded in the petition or
13 complaint being heard the court must conform its
14 support order to the amount allowed in the other action
15 or proceeding. Thereafter the court shall not stay
16 enforcement of its support order because of the retention
17 of jurisdiction for enforcement purposes by the court in
18 the other action or proceeding.

§48A-7-30. Effect of participation in proceeding.

1 Participation in any proceeding under this article does
2 not confer jurisdiction upon any court over any of the
3 parties thereto in any other proceeding.

**§48A-7-31. Application of article where obligee and
obligor are in different counties in this
state.**

1 This article applies if both the obligee and the obligor
2 are in this state but in different counties. If the circuit
3 court of the county in which the petition or complaint
4 is filed finds that the petition or complaint sets forth
5 facts from which it may be determined that the obligor
6 owes a duty of support and finds that a circuit court of
7 another county in this state may obtain jurisdiction over
8 the obligor or his property, the clerk of the court shall
9 send the petition or complaint and a certification of the

10 findings to the circuit court of the county in which the
11 obligor or his property is found. The clerk of the court
12 of the county receiving these documents shall notify the
13 childrens' advocate of their receipt. The childrens'
14 advocate and the circuit court in the county in which
15 the copies are forwarded then shall have duties corres-
16 ponding to those imposed upon them when acting for
17 this state as a responding state.

§48A-7-32. Appeals.

1 If the attorney general is of the opinion that a support
2 order is erroneous and presents a question of law
3 warranting an appeal in the public interest, he may:

4 (a) Perfect an appeal to the supreme court of appeals
5 if the support order was issued by a circuit court of this
6 state, or

7 (b) If the support order was issued in another state,
8 cause the appeal to be taken in the other state. In either
9 case expenses of appeal may be paid on his order from
10 funds appropriated for his office.

§48A-7-33. Additional remedies for enforcement of foreign support order.

1 If the duty of support is based on a foreign support
2 order, the obligee has the additional remedies provided
3 in sections thirty-four through thirty-eight of this
4 article.

§48A-7-34. Registration of foreign support order.

1 The obligee may register the foreign support order in
2 a court of this state in the manner, with the effect, and
3 for the purposes herein provided.

§48A-7-35. Clerk to maintain registry of foreign support orders.

1 The clerk of the court shall maintain a registry of
2 foreign support orders in which he shall file foreign
3 support orders.

§48A-7-36. Childrens' advocate to represent obligee.

1 If this state is acting either as a rendering or a

2 registering state the childrens' advocate shall represent
3 the obligee in proceedings under sections thirty-~~four~~^{three}
4 through thirty-~~five~~^{three} of this article.

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§48A-7-37. Registration procedure; notice; childrens' advocate to enforce order.

1 (a) An obligee seeking to register a foreign support
2 order in a court of this state shall transmit to the clerk
3 of the court (1) three certified copies of the order with
4 all modifications thereof, (2) one copy of the reciprocal
5 enforcement of support law of the state in which the
6 order was made, and (3) a statement verified and signed
7 by the obligee, showing the post office address of the
8 obligee, the last known place of residence and post-office
9 address of the obligor, the amount of support remaining
10 unpaid, a description and the location of any property
11 of the obligor available upon execution, and a list of the
12 states in which the order is registered. Upon receipt of
13 these documents the clerk of the court, without payment
14 of a filing fee or other cost to the obligee, shall file them
15 in the registry of foreign support orders. The filing
16 constitutes registration under this article.

17 (b) Promptly upon registration the clerk of the court
18 shall send by certified or registered mail to the obligor
19 at the address given a notice of the registration with a
20 copy of the registered support order and the post-office
21 address of the obligee. He shall also docket the case and
22 notify the childrens' advocate of his action. The child-
23 rens' advocate shall proceed diligently to enforce the
24 order.

§48A-7-38. Effect of registration; enforcement procedure.

1 (a) Upon registration, the registered foreign support
2 order shall be treated in the same manner as a support
3 order issued by a circuit court of this state. It has the
4 same effect and is subject to the same procedures,
5 defenses and proceedings for reopening, vacating or
6 staying as a support order of this state and may be
7 enforced and satisfied in like manner.

8 (b) The obligor has twenty days after the mailing of

9 notice of the registration in which to petition the court
10 to vacate the registration or for other relief. If he does
11 not so petition the registered support order is confirmed.

12 (c) At the hearing to enforce the registered support
13 order the obligor may present only matters that would
14 be available to him as defenses in an action to enforce
15 a foreign money judgment. If he shows to the court that
16 an appeal from the order is pending or will be taken
17 or that a stay of execution has been granted, the court
18 shall stay enforcement of the order until the appeal is
19 concluded, the time for appeal has expired, or the order
20 is vacated, upon satisfactory proof that the obligor has
21 furnished security for payment of the support ordered
22 as required by the rendering state. If he shows to the
23 court any ground upon which enforcement of a support
24 order of this state may be stayed the court shall stay
25 enforcement of the order for an appropriate period if the
26 obligor furnishes the same security for payment of the
27 support ordered that is required for a support order of
28 this state.

§48A-7-39. Uniformity of interpretation.

1 This article shall be so construed as to effectuate its
2 general purpose to make uniform the law of those states
3 which enact a substantially similar law.

§48A-7-40. Short title.

1 This article may be cited as the "Revised Uniform
2 Reciprocal Enforcement of Support Act."

§48A-7-41. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held invalid, the
3 invalidity does not affect other provisions or applications
4 of this article, and to this end the provisions of this
5 article are severable.

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

Bruce O. Wilton
 Chairman Senate Committee

Floyd Fuller
 Chairman House Committee

Originating in the House.

Takes effect July 1, 1986.

Sold C. Wills
 Clerk of the Senate

Donald L. Hogg
 Clerk of the House of Delegates

Dan Tonkovich
 President of the Senate

Joseph P. Allright
 Speaker of the House of Delegates

The within *appeared* this the *26th*
March
 day of _____, 1986.

Arthur. B. ...
 Governor

PRESENTED TO THE
GOVERNOR

Date 3/24/86

Time 4:33 p.m.

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OFFICE OF THE
SECRETARY OF STATE

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SECRETARY OF STATE OF
WEST VIRGINIA
THIS DATE 3/26/86 *g. Quash*