

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

Com. Sub. for
HOUSE BILL No. 4398

(By Mr. Speaker, Mr. Clough, & Del. R. Burk)
[By Request of the Executive]

— ● —

Passed March 10, 1990

In Effect July 1, 1990 ~~Passage~~

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COMMITTEE SUBSTITUTE
FOR
H. B. 4398
(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE R. BURK)
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AN ACT to repeal section five, article three, and section seven, article five, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections twelve, fourteen, fifteen, sixteen, seventeen, and twenty-four, article five, chapter sixteen of said code; to further amend said article five by adding thereto a new section, designated section eighteen-b; and to amend and reenact sections one, fifteen, fifteen-a, twenty-seven and thirty-three, article two, chapter forty-eight; to further amend said article two by adding thereto a new section, designated section fifteen-b; to amend and reenact sections two and seven, article two; sections one, two, three, six and eight, article three; sections one, two, three, four, five, six, seven, eight, nine, and ten, article four, all of chapter forty-eight-a of said code; and to further amend said article four by adding thereto three new sections, designated sections two-a and four-a; to amend and reenact sections one and three, article five; sections five and six, article six; and section fourteen, article seven, all of said chapter forty-eight-a; and to amend and reenact section four, article five, chapter fifty-seven of

said code, all relating to the enforcement of support obligations generally; requiring parents to furnish social security account numbers in the administration of laws involving the issuance of birth certificates; limiting the use of social security numbers made available by the state registrar of vital statistics; defining certain terms relating to domestic relations; prescribing when prenuptial agreements are void; describing the relief which may be granted upon ordering a divorce or annulment or granting a decree of separate maintenance; providing an additional basis for revising or altering a child support order; providing for withholding from income of amounts due as support; authorizing the family law master to open and inspect sealed court files; providing that the giving of incorrect information is false swearing; describing legislative intent; describing the responsibilities of the child advocate office; removing mediation and counseling and the enforcement of custody and visitation as responsibilities of the child advocate office; within existing appropriations, director to install computers in the office of each children's advocate; establishing the position of general counsel for the child advocate office; clarifying the duties of the children's advocate as regards the supervision of employees and the exercise of professional judgment; providing for the temporary reassignment of children's advocates; eliminating the requirement that the children's advocate investigate domestic relations cases; providing for periodic review of support orders; establishing a minimum salary for the position of children's advocate; exempting certain family law masters from appointments in indigent cases; redistributing the family law masters geographically; providing for referral of matters to a family law master; describing the matters to be heard by a family law master and fixing the fees for hearings; describing the powers of a master presiding at a hearing; providing for duplicate copies of electronic recordings of hearings and the preparation of transcripts; establishing procedures to be used in case of contemptuous acts or failures to act before a master; providing for recommended orders and findings of fact and conclusions of law by a master; setting forth a form

of notice of recommended order; describing orders to be entered exclusively by the circuit court; establishing procedures for review by the circuit court of a master's recommended order; providing for the filing of an answer in opposition to a petition for review; providing for withholding from income of amounts payable as support; requiring a parent to furnish a social security account number in connection with a voluntary acknowledgment of paternity; and empowering a family law master to order the issuance of a subpoena duces tecum.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-12. Birth registration generally.

- 1 (a) A certificate of birth for each live birth which
- 2 occurs in this state shall be filed with the local registrar
- 3 of the district in which the birth occurs within seven

4 days after such birth and shall be registered by such
5 registrar if it has been completed and filed in accordance
6 with this section. When a birth occurs in a moving
7 conveyance, a birth certificate shall be filed in the
8 district in which the child is first removed from the
9 conveyance. When a birth occurs in a district other than
10 where the mother resides, a birth certificate shall be
11 filed in the district in which the child is born and in
12 the district in which the mother resides.

13 (b) When a birth occurs in an institution, the person
14 in charge of the institution or his designated representative
15 shall obtain the personal data, prepare the
16 certificate, secure the signatures required for the
17 certificate and file it with the local registrar. The
18 physician in attendance shall certify to the facts of birth
19 and provide the medical information required for the
20 certificate within five days after the birth.

21 (c) When a birth occurs outside an institution, the
22 certificate shall be prepared and filed by one of the
23 following in the indicated order of priority:

24 (1) The physician in attendance at or immediately
25 after the birth, or in the absence of such a person,

26 (2) Any other person in attendance at or immediately
27 after the birth, or in the absence of such a person,

28 (3) The father, the mother, or, in the absence of the
29 father and the inability of the mother, the person in
30 charge of the premises where the birth occurred.

31 (d) If the mother was married either at the time of
32 conception or birth, the name of the husband shall be
33 entered on the certificate as the father of the child
34 unless paternity has been determined otherwise by a
35 court of competent jurisdiction, in which case the name
36 of the father as determined by the court shall be
37 entered.

38 (e) If the mother was not married either at the time
39 of conception or birth, the name of the father shall not
40 be entered on the certificate of birth without the written
41 consent of the mother and of the person to be named as
42 the father unless a determination of paternity has been

43 made by a court of competent jurisdiction, in which case
44 the name of the father as determined by the court shall
45 be entered.

46 (f) Either of the parents of the child shall sign the
47 certificate of live birth to attest to the accuracy of the
48 personal data entered thereon, in time to permit its
49 filing within the seven days prescribed above.

50 (g) In order that each county may have a complete
51 record of the births occurring in said county, the local
52 registrar shall transmit each month to the county clerk
53 of his county the copies of the certificates of all births
54 occurring in said county, from which copies the clerk
55 shall compile a record of such births and shall enter the
56 same in a systematic and orderly way in a well-bound
57 register of births, which said register shall be a public
58 record: *Provided*, That such copies and register shall not
59 state that any child was either legitimate or illegitimate.
60 The form of said register of births shall be prescribed
61 by the state registrar of vital statistics.

62 (h) On and after the first day of November, one
63 thousand nine hundred ninety, in addition to the
64 personal data furnished for the certificate of birth
65 issued for a live birth in accordance with the provisions
66 of this section, a person whose name is to appear on such
67 certificate of birth as a parent shall contemporaneously
68 furnish to the person preparing and filing the certificate
69 of birth the social security account number (or numbers,
70 if the parent has more than one such number) issued to
71 the parent. A record of the social security number or
72 numbers shall be filed with the local registrar of the
73 district in which the birth occurs within seven days
74 after such birth, and the local registrar shall transmit
75 such number or numbers to the state registrar of vital
76 statistics in the same manner as other personal data is
77 transmitted to the state registrar.

§16-5-14. Delayed registration of births.

1 (a) When the birth of a person born in this state has
2 not been registered within the time period provided in
3 section twelve of this article, a certificate may be filed
4 in accordance with a legislative rule promulgated by the

5 state board of health in accordance with the provisions
6 of chapter twenty-nine-a of this code. Such certificate
7 shall be registered subject to such evidentiary require-
8 ments as the state board of health shall by rule prescribe
9 to substantiate the alleged facts of birth.

10 (b) Certificates of birth registered one year or more
11 after the date of occurrence shall be marked "Delayed"
12 and shall show on their face the date of the delayed
13 registration.

14 (c) A summary statement of the evidence submitted
15 in support of the delayed registration shall be endorsed
16 on the certificate.

17 (d)(1) When an applicant does not submit the min-
18 imum documentation required in the rules for delayed
19 registration or when the state registrar of vital statistics
20 finds reason to question the validity or adequacy of the
21 certificate or the documentary evidence, the state
22 registrar of vital statistics shall not register the delayed
23 certificate and shall advise the applicant in writing of
24 the reasons for this action.

25 (2) The state board of health may by legislative rule
26 promulgated in accordance with the provisions of
27 chapter twenty-nine-a of this code provide for the
28 dismissal of an application which is not actively
29 prosecuted.

30 (e) On and after the first day of November, one
31 thousand nine hundred ninety, in addition to the
32 required documentation and other data furnished in an
33 application for a delayed registration of birth in
34 accordance with the provisions of this section, a person
35 whose name is to appear on the certificate of birth as
36 a parent shall contemporaneously furnish with the
37 application the social security account number (or
38 numbers, if the parent has more than one such number)
39 issued to the parent.

§16-5-15. Judicial procedure to establish facts of birth.

1 (a) If a delayed certificate of birth is refused under
2 the provisions of section fourteen of this article, a
3 petition may be filed in the circuit court of the county

4 in which the petitioner resides or in the circuit court of
5 Kanawha County for an order establishing a record of
6 the date and place of the birth and the parentage of the
7 person whose birth is to be registered.

8 (b) Such petition shall allege:

9 (1) That the person for whom a delayed registration
10 of birth is sought was born in this state;

11 (2) That no record of birth of such person can be
12 found in the office of the state or the local custodian of
13 birth records;

14 (3) That diligent efforts by the petitioner have failed
15 to obtain the evidence required in accordance with
16 section fourteen of this article and of any rules and
17 regulations adopted and promulgated thereunder;

18 (4) That the state registrar of vital statistics has
19 refused to register a delayed certificate of birth; and

20 (5) Such other allegations as may be required by the
21 court.

22 (c) The petition shall be accompanied by a copy of the
23 statement of reasons of the registration official made in
24 accordance with subsection (d)(1), section fourteen of
25 this article and by all documentary evidence which was
26 submitted to the registration official in support of such
27 registration.

28 (d) The court shall fix a time and place for hearing
29 the petition and shall require that the petitioner give the
30 registration official who refused to register the petition-
31 er's delayed certificate of birth not less than twenty
32 days' notice of said hearing. Such official, or his
33 authorized representative, may appear and testify in the
34 proceeding.

35 (e) If the court finds from the evidence presented that
36 the person for whom a delayed certificate of birth is
37 sought was born in this state, it shall make findings as
38 to the place and date of birth, parentage, and such other
39 findings as the case may require and shall issue an order
40 setting forth the information required under the
41 provisions of this article to establish a record of birth.

42 This order shall include the birth date to be registered,
43 a summary statement of the evidence presented, and the
44 date of the court's action.

45 (f) The clerk of the court shall forward each such
46 order to the state registrar of vital statistics not later
47 than the tenth day of the calendar month following the
48 month in which it was entered. Such order shall be
49 registered by the state registrar of vital statistics and
50 shall constitute the record of birth, from which copies
51 may be issued in accordance with the provisions of this
52 article.

53 (g) Any judgment shall be final unless reversed,
54 vacated or modified on appeal, and any appeal shall be
55 sought in the manner and within the time provided by
56 law for appeals in other civil cases.

57 (h) On and after the first day of November, one
58 thousand nine hundred ninety, in addition to the
59 evidence presented to establish a record of birth in
60 accordance with the provisions of this section, a person
61 whose name is to appear on the delayed certificate of
62 birth as a parent shall furnish to the clerk of the circuit
63 court the social security account number (or numbers,
64 if the parent has more than one such number) issued to
65 the parent. A record of the social security number or
66 numbers shall be forwarded to the state registrar of
67 vital statistics along with the order establishing a record
68 of birth, as provided for in subsection (f) of this section.

§16-5-16. Court reports of adoption.

1 (a) In conformance with the provisions of section ten,
2 article four, chapter forty-eight of this code, any court
3 in this state entering an order of adoption shall require
4 the preparation by the clerk of the court of a certificate
5 of adoption on a form prescribed and furnished by the
6 state registrar of vital statistics. Such certificate shall
7 include the factual information described in section ten,
8 article four, chapter forty-eight of this code; shall
9 provide such additional information as may be required
10 under legislative rules duly adopted pursuant to this
11 article to establish a new certificate of birth of the
12 person adopted; shall identify the order of adoption; and

13 shall be certified by the clerk of court.

14 (b) Information in the possession of the petitioner
15 necessary to prepare the certificate of adoption shall be
16 pleaded in the petition for adoption or shall be furnished
17 to the clerk of the court by the petitioner for adoption
18 at the time the petition is filed. Any social or welfare
19 agency or other person concerned with the adoption
20 shall supply the petitioner with such information in the
21 possession of such agency or person as may be necessary
22 to complete the certificate.

23 (c) Whenever an adoption order or decree is amended
24 or vacated, the clerk of the court shall prepare a
25 certificate thereof, which shall include such facts as are
26 necessary to identify the original adoption certificate
27 and the facts amended in the adoption order or decree
28 which are required to properly amend the birth record.

29 (d) Not later than the tenth day of each calendar
30 month, the clerk of the court shall forward to the state
31 registrar of vital statistics a report of all orders or
32 decrees of adoption and of annulments or amendments
33 thereof, entered in the preceding month, together with
34 such related certificates and reports as may be required
35 under the provisions of this article.

36 (e) When the state registrar of vital statistics shall
37 receive a record of adoption or of an annulment or an
38 amendment of an order or decree of adoption from a
39 court for a person born outside of this state, such record
40 shall be forwarded to the appropriate registration
41 authority in the state of birth.

42 (f) On and after the first day of November, one
43 thousand nine hundred ninety, in addition to the
44 information pleaded or furnished in accordance with the
45 provisions of subsection (b) of this section, each person
46 whose name is to appear on the certificate of adoption
47 as a parent, whether as an adoptive parent or as a
48 natural parent who joins in the adoption without
49 relinquishing parental rights, shall furnish to the clerk
50 of the circuit court the social security account number
51 (or numbers, if the parent has more than one such
52 number) issued to the parent. A record of the social

53 security number or numbers shall be forwarded to the
54 state registrar of vital statistics along with the certifi-
55 cate of adoption, as provided for in subsection (d) of this
56 section.

§16-5-17. Court reports of determination of paternity.

1 (a) Whenever a judgment has been entered determin-
2 ing the paternity of a child, the clerk of the court shall
3 prepare a certificate on a form prescribed and furnished
4 by the state registrar of vital statistics. The certificate
5 shall include such facts as are necessary to locate and
6 identify the certificate of birth of the person whose
7 paternity is determined; shall provide information
8 necessary to establish a new certificate of birth of the
9 person whose paternity is determined; and shall identify
10 the action and be certified by the clerk of court.

11 (b) Not later than the tenth day of each calendar
12 month, the clerk of the court shall forward to the state
13 registrar of vital statistics certificates of paternity
14 entered in the preceding month, together with such
15 related reports as the state registrar of vital statistics
16 shall require.

17 (c) On and after the first day of November, one
18 thousand nine hundred ninety, in addition to providing
19 the information necessary to establish a new certificate
20 of birth of the person whose paternity has been
21 determined, in accordance with the provisions of
22 subsection (a) of this section, a person whose name is to
23 appear on the certificate of paternity as a parent shall
24 furnish to the clerk of the circuit court the social
25 security account number (or numbers, if the parent has
26 more than one such number) issued to the parent. A
27 record of the social security number or numbers shall
28 be forwarded to the state registrar of vital statistics
29 along with the certificate of paternity, as provided for
30 in subsection (b) of this section.

§16-5-18b. Limitation on use of social security numbers.

1 (a) A social security account number obtained in
2 accordance with the provisions of this article with
3 respect to the filing of (1) a certificate of birth, (2) an

4 application for a delayed registration of birth, (3) a
5 judicial order establishing a record of birth, (4) an
6 adoption order or decree, or (5) a certificate of paternity
7 shall not be transmitted to a clerk of the county
8 commission. Such social security account number shall
9 not appear upon the public record of the register of
10 births or upon any certificate of birth registration issued
11 by the state registrar, local registrar, county clerk or
12 other issuing authority, if any. Such social security
13 account numbers shall be made available by the state
14 registrar to the child advocate office upon its request,
15 to be used solely in connection with the enforcement of
16 child support orders.

17 (b) A parent who desires not to furnish a social
18 security account number as required by the provisions
19 of this article or section six, article six, chapter forty-
20 eight-a of this code shall file with the person responsible
21 for obtaining personal data from the parent, a request
22 that he or she not be required to furnish such number.
23 The request shall be made on a form prescribed by the
24 state registrar of vital statistics or in a substantially
25 similar instrument, and shall set forth the reasons that
26 the parent declines or is unable to furnish such number.
27 Supplies of a form for the request shall be made
28 available to hospitals, circuit clerks, and other persons
29 responsible for obtaining personal data from parents,
30 and shall be provided to any parent who states that he
31 or she desires not to be required to furnish such number.
32 A request, when received, shall be transmitted in the
33 same manner as a record of a social security account
34 number. The board of health shall promulgate legisla-
35 tive rules in accordance with the provisions of chapter
36 twenty-nine-a of this code which shall establish the
37 procedural means and substantive criteria by which the
38 state registrar may determine whether there exists good
39 cause for not requiring the furnishing of such number.
40 In proposing the promulgation of such rules, the board
41 of health shall give due consideration to related
42 regulations prescribed by the secretary of health and
43 human services of the United States.

§16-5-24. Correction and amendment of vital records.

1 (a) A certificate or record registered pursuant to this
2 article may be amended only in accordance with the
3 provisions of this article and rules and regulations duly
4 adopted thereunder.

5 (b) A certificate that is amended under this section
6 shall be marked "amended," except as hereinafter
7 provided in this subsection and in subsection (d) of this
8 section. The date of amendment and a summary
9 description of the evidence submitted in support of the
10 amendment shall be endorsed on or made a part of the
11 record. The state board of health shall prescribe by rule
12 and regulation the conditions under which additions or
13 minor corrections shall be made to birth certificates
14 within one year after the date of birth without the
15 certificate being considered or marked as amended. The
16 state board of health shall also prescribe by legislative
17 rule promulgated in accordance with the provisions of
18 chapter twenty-nine-a of this code a simplified proce-
19 dure for the correction of any certificate or record
20 registered pursuant to this article which is deficient in
21 any particular, including, but not limited to, the
22 omission or misspelling of a first name, and such rule
23 and regulation shall specify when and under what
24 circumstances a certificate or record so corrected shall
25 be considered or marked as amended.

26 (c) Upon receipt of a certified copy of a court order
27 of a court of competent jurisdiction changing the name
28 of a person born in this state, which order was made
29 and entered in a proceeding brought for that purpose,
30 and upon request of such person or his parent, guardian,
31 or legal representative, the state registrar of vital
32 statistics shall amend the certificate of birth to reflect
33 the new name.

34 (d) Upon request, and upon receipt of a sworn
35 acknowledgment of paternity of a child born out of
36 wedlock signed by both parents, the state registrar of
37 vital statistics shall amend the certificate of birth to
38 show such paternity if paternity is not shown on the
39 birth certificate. Upon request of both of the parents,
40 the surname of the child shall be changed on the
41 certificate to that of the father. Such certificate shall not

42 be marked "amended."

43 (e) When a certificate is amended under this section,
44 the state registrar of vital statistics shall report the
45 amendment to the custodian of any permanent local
46 records and such record shall be amended accordingly.

47 (f) On and after the first day of November, one
48 thousand nine hundred ninety, in addition to providing
49 the information necessary to amend a certificate or
50 record in accordance with the provisions of this section,
51 a person whose name is to appear on the amended
52 certificate as a parent shall furnish to the person
53 receiving the information the social security account
54 number (or numbers, if the parent has more than one
55 such number) issued to the parent. A record of the social
56 security number or numbers shall be forwarded to the
57 state registrar of vital statistics along with the informa-
58 tion required for the amended certificate.

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 installment 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 either of the parties is a minor.

28 (c) "Earnings" means compensation paid or payable
29 for personal services, whether denominated as wages,
30 salary, commission, bonus, or otherwise, and includes
31 periodic payments pursuant to a pension or retirement
32 program. "Disposable earnings" means that part of the
33 earnings of any individual remaining after the deduc-
34 tion from those earnings of any amounts required by law
35 to be withheld.

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

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

40 (2) Any payment due or to be due in the future to an
41 individual from a profit-sharing plan, a pension plan, an
42 insurance contract, an annuity, social security, unem-
43 ployment compensation, supplemental employment
44 benefits, and workers' compensation;

45 (3) Any amount of money which is owing to an
46 individual as a debt from an individual, partnership,
47 association, public or private corporation, the United
48 States or any federal agency, this state or any political
49 subdivision of this state, any other state or a political
50 subdivision of another state, or any other legal entity
51 which is indebted to the obligor.

52 (e) "Marital property" means:

53 (1) All property and earnings acquired by either
54 spouse during a marriage, including every valuable
55 right and interest, corporeal or incorporeal, tangible or
56 intangible, real or personal, regardless of the form of
57 ownership, whether legal or beneficial, whether individ-

58 ually held, held in trust by a third party, or whether
59 held by the parties to the marriage in some form of co-
60 ownership such as joint tenancy or tenancy in common,
61 joint tenancy with the right of survivorship, or any other
62 form of shared ownership recognized in other jurisdic-
63 tions without this state, except that marital property
64 shall not include separate property as defined in
65 subsection (d) of this section; and

66 (2) The amount of any increase in value in the
67 separate property of either of the parties to a marriage,
68 which increase results from (A) an expenditure of funds
69 which are marital property, including an expenditure of
70 such funds which reduces indebtedness against separate
71 property, extinguishes liens, or otherwise increases the
72 net value of separate property, or (B) work performed
73 by either or both of the parties during the marriage.

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

86 (f) "Separate property" means:

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

88 (2) Property acquired by a person during marriage in
89 exchange for separate property which was acquired
90 before the marriage; or

91 (3) Property acquired by a person during marriage,
92 but excluded from treatment as marital property by a
93 valid agreement of the parties entered into before or
94 during the marriage; or

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

97 (5) Property acquired by a party during a marriage
98 but after the separation of the parties and before the
99 granting of a divorce, annulment or decree of separate
100 maintenance; and

101 (6) Any increase in the value of separate property as
102 defined in subdivision (1), (2), (3), (4) or (5) of this
103 subsection which is due to inflation or to a change in
104 market value resulting from conditions outside the
105 control of the parties.

106 (g) "Separation" or "separation of the parties" means
107 the separation of the parties next preceding the filing
108 of an action under the provisions of this article, which
109 separation continues, without the parties cohabiting or
110 otherwise living together as husband and wife, and
111 without interruption.

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

**§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 install-
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 circumstan-
25 ces. In addition, the court may, in its discretion, make
26 such further order as it shall deem expedient, concern-
27 ing the grant of reasonable visitation rights to any
28 grandparent or grandparents of the minor children
29 upon application, if the grandparent or grandparents
30 are related to such minor child through a party:

31 (A) Whose whereabouts are unknown, or

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

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

37 (3) As an incident to requiring the payment of
38 alimony or child support, the court may order either
39 party to continue in effect existing policies of insurance
40 covering the costs of health care and hospitalization of
41 the other party and the minor children of the parties:
42 *Provided*, That if the other party is no longer eligible
43 to be covered by such insurance because of the granting
44 of an annulment or divorce, the court may require a
45 party to substitute such insurance with a new policy to
46 cover the other party, or may consider the prospective

47 cost of such insurance in awarding alimony to be paid
48 in periodic installments. If there is no such existing
49 policy or policies, the court shall order such health care
50 insurance coverage to be paid for by the noncustodial
51 parent, if the court determines that such health care
52 insurance coverage is available to the noncustodial
53 parent at a reasonable cost. Payments made to an
54 insurer pursuant to this subdivision, either directly or
55 by a deduction from wages, shall be deemed to be
56 alimony, child support or installment payments for the
57 distribution of marital property, in such proportion as
58 the court shall direct: *Provided*, That if the court does
59 not set forth in the order that a portion of such payments
60 is to be deemed child support or installment payments
61 for the distribution of marital property, then all such
62 payments made pursuant to this subdivision shall be
63 deemed to be alimony: *Provided, however*, That the
64 designation of insurance coverage as alimony under the
65 provisions of this subdivision shall not, in and of itself,
66 give rise to a subsequent modification of the order to
67 provide for alimony other than insurance for covering
68 the costs of health care and hospitalization.

69 (4) As an incident to requiring the payment of
70 alimony or child support, the court may grant the
71 exclusive use and occupancy of the marital home to one
72 of the parties, together with all or a portion of the
73 household goods, furniture and furnishings reasonably
74 necessary for such use and occupancy. Such use and
75 occupancy shall be for a definite period, ending at a
76 specific time set forth in the order, subject to modifi-
77 cation upon the petition of either party. Except in
78 extraordinary cases supported by specific findings set
79 forth in the order granting relief, a grant of the
80 exclusive use and occupancy of the marital home shall
81 be limited to those situations where such use and
82 occupancy is reasonably necessary to accommodate the
83 rearing of minor children of the parties. The court may
84 require payments to third parties in the form of home
85 loan installments, land contract payments, rent, pay-
86 ments for utility services, property taxes, insurance
87 coverage, or other expenses or charges reasonably
88 necessary for the use and occupancy of the marital

89 domicile. Payments made to a third party pursuant to
90 this subdivision for the benefit of the other party shall
91 be deemed to be alimony, child support or installment
92 payments for the distribution of marital property, in
93 such proportion as the court shall direct: *Provided*, That
94 if the court does not set forth in the order that a portion
95 of such payments is to be deemed child support or
96 installment payments for the distribution of marital
97 property, then all such payments made pursuant to this
98 subdivision shall be deemed to be alimony. Nothing
99 contained in this subdivision shall abrogate an existing
100 contract between either of the parties and a third party,
101 or affect the rights and liabilities of either party or a
102 third party under the terms of such contract.

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

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

124 (7) Unless a contrary disposition be found appropriate
125 and ordered pursuant to other provisions of this section,
126 then upon the motion of either party, the court may
127 compel the other party to deliver to the movant party
128 any of his or her separate estate which may be in the
129 possession or control of the respondent party, and may

130 make such further order as is necessary to prevent
131 either party from interfering with the separate estate
132 of the other.

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

138 (9) The court may order either party to take necessary
139 steps to transfer utility accounts and other accounts for
140 recurring expenses from the name of one party into the
141 name of the other party or from the joint names of the
142 parties into the name of one party. Nothing contained
143 in this subdivision shall affect the liability of the parties
144 for indebtedness on any such account incurred before
145 the transfer of such account.

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

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

158 (e) At any time after the entry of an order pursuant
159 to the provisions of this section, the court may, upon the
160 verified petition of either of the parties, revise or alter
161 such order concerning the maintenance of the parties,
162 or either of them, and make a new order concerning the
163 same, as the altered circumstances or needs of the
164 parties may render necessary to meet the ends of justice.
165 The court may also from time to time afterward, on the
166 verified petition of either of the parties or other proper
167 person having actual or legal custody of the minor child
168 or children of the parties, revise or alter such order
169 concerning the custody and support of the children, and

170 make a new order concerning the same, as the circum-
171 stances of the parents or other proper person or persons
172 and the benefit of the children may require: *Provided*,
173 That an order providing for child support payments
174 may be revised or altered for the reason, inter alia, that
175 the existing order provides for child support payments
176 in an amount that is less than eighty-five percent or
177 more than one hundred fifteen percent of the amount
178 that would be required to be paid under the child
179 support guidelines promulgated pursuant to the provi-
180 sions of section eight, article two, chapter forty-eight-a
181 of this code. In granting relief under this subsection, the
182 court may, where other means are not conveniently
183 available, alter any prior order of the court with respect
184 to the distribution of marital property, if such property
185 is still held by the parties, and if necessary to give effect
186 to a modification of alimony, child support or child
187 custody or necessary to avoid an inequitable or unjust
188 result which would be caused by the manner in which
189 the modification will affect the prior distribution of
190 marital property.

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

205 (g) In every case where a separation agreement is the
206 basis for an award of alimony, the court, in approving
207 the agreement, shall examine the agreement to ascer-
208 tain whether it clearly provides for alimony to continue
209 beyond the remarriage of the payee party or to cease in
210 such event. Where alimony is to be paid pursuant to the

211 terms of a separation agreement which does not state
212 whether the payment of alimony is to continue beyond
213 the remarriage of the payee party or is to cease, or
214 where the parties have not entered into a separation
215 agreement and alimony is to be awarded, the court shall
216 specifically state as a part of its order whether such
217 payments of alimony are to be continued beyond the
218 remarriage of the payee party or cease.

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

230 (i) In determining whether alimony is to be awarded,
231 or in determining the amount of alimony, if any, to be
232 awarded under the provisions of this section, the court
233 shall consider and compare the fault or misconduct of
234 either or both of the parties and the effect of such fault
235 or misconduct as a contributing factor to the deteriora-
236 tion of the marital relationship. However, alimony shall
237 not be awarded in any case where both parties prove
238 grounds for divorce and are denied a divorce, nor shall
239 an award of alimony under the provisions of this section
240 be ordered which directs the payment of alimony to a
241 party determined to be at fault, when, as a grounds
242 granting the divorce, such party is determined by the
243 court:

244 (1) To have committed adultery; or

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

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

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

**§48-2-15a. Withholding from income prior to November
 1, 1990.**

1 (a) From the first day of July, one thousand nine
 2 hundred eighty-six, until the thirty-first day of October,
 3 one thousand nine hundred ninety, both inclusive, every
 4 order entered or modified under the provisions of this
 5 article which requires the payment of child support or
 6 spousal support shall include a provision for automatic
 7 withholding from income of the obligor if arrearages in
 8 such support occur, in order to facilitate income
 9 withholding as a means of collecting support when such
 10 arrearages occur.

11 (b) Every such order as described in subsection (a)
 12 above shall contain or be considered to contain language
 13 authorizing income withholding to commence without
 14 further court action:

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

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

22 (3) When the obligor requests the child advocate office
 23 to commence income withholding.

24 (c) For the purposes of this section, the number of

25 days support payments are in arrears shall be consi-
26 dered to be the total cumulative number of days during
27 which payments required by a court order have been
28 delinquent, whether or not such days are consecutive.

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

35 (e) Every support order entered by a circuit court of
36 this state prior to the first day of July, one thousand nine
37 hundred eighty-six, shall be considered to provide for an
38 order of income withholding by operation of law,
39 notwithstanding the fact that such support order does
40 not in fact provide for an order of withholding.

**§48-2-15b. Withholding from income on and after No-
vember 1, 1990.**

1 (a) On and after the first day of November, one
2 thousand nine hundred ninety, every order entered or
3 modified under the provisions of this article which
4 requires the payment of child support or spousal support
5 shall include a provision for automatic withholding from
6 income of the obligor, in order to facilitate income
7 withholding as a means of collecting support.

8 (b) Every such order as described in subsection (a) of
9 this section shall contain language authorizing income
10 withholding to commence without further court action,
11 as follows:

12 (1) The order shall provide that income withholding
13 will begin immediately, without regard to whether there
14 is an arrearage, (A) when a child for whom support is
15 ordered is included or becomes included in a grant of
16 assistance from the division of human services or a
17 similar agency of a sister state for aid to families with
18 dependent children benefits, medical assistance only
19 benefits, or foster care benefits; or (B) when the support
20 obligee has applied for services from the child advocate
21 office or the support enforcement agency of another

22 state or is otherwise receiving services from the child
 23 advocate office as provided for in chapter forty-eight-a
 24 of this code. Such order may provide that income
 25 withholding shall not begin immediately in any case
 26 where one of the parties demonstrates, and the court
 27 finds, that there is good cause not to require immediate
 28 income withholding, or in any case where there is filed
 29 with the court a written agreement between the parties
 30 which provides for an alternative arrangement and the
 31 agreement has been filed with the court.

32 (2) The order shall also provide that income withhold-
 33 ing will begin immediately upon the occurrence of any
 34 of the following:

35 (A) When the support payments required by such
 36 order are thirty days or more in arrears if the order
 37 requires payments to be made in monthly installments;

38 (B) When the support payments required by such
 39 order are twenty-eight days or more in arrears if the
 40 order requires payments to be paid in weekly or bi-
 41 weekly installments;

42 (C) When the obligor requests the child advocate
 43 office to commence income withholding; or

44 (D) When the obligee requests that such withholding
 45 begin, if the request is approved by the court in
 46 accordance with procedures and standards established
 47 by rules and regulations promulgated by the director of
 48 the child advocate office.

49 (c) For the purposes of this section, the number of
 50 days support payments are in arrears shall be consi-
 51 dered to be the total cumulative number of days during
 52 which payments required by a court order have been
 53 delinquent, whether or not such days are consecutive.

54 (d) The supreme court of appeals shall make available
 55 to the circuit courts standard language to be included
 56 in all such orders, so as to conform such orders to the
 57 applicable requirements of state and federal law
 58 regarding the withholding from income of amounts
 59 payable as support.

60 (e) Every support order entered by a circuit court of
61 this state prior to the first day of November, one
62 thousand nine hundred ninety, shall be considered to
63 provide for an order of income withholding, by operation
64 of law, which complies with the provisions of this
65 section, notwithstanding the fact that such support
66 order does not in fact provide for such order of
67 withholding.

§48-2-27. Sealing by clerk of evidence and pleadings.

1 When a judgment order is entered in any action for
2 annulment of marriage or for divorce, the clerk shall
3 immediately seal in a package all pleadings, except the
4 orders of the court, all the written testimony, exhibits
5 to the testimony, the stenographic notes or other
6 recordings of the testimony, if any were taken, the
7 commissioner's report, and all other evidence, and the
8 same shall not be again opened except upon written
9 permission of the court: *Provided*, That a family law
10 master before whom a subsequent matter in the same
11 action is pending may open and inspect the pleadings,
12 testimony, exhibits, notes and recordings, reports,
13 evidence and all other contents of the sealed court file
14 without the written permission of the court.

§48-2-33. Disclosure of assets required.

1 (a) In addition to any discovery ordered by the court
2 pursuant to rule eighty-one of the rules of civil proce-
3 dure, the court may, or upon pleadings or motion of
4 either party, the court shall, require each party to
5 furnish, on such standard forms as the court may
6 require, full disclosure of all assets owned in full or in
7 part by either party separately or by the parties jointly.
8 Such disclosure may be made by each party individually
9 or by the parties jointly. Assets required to be disclosed
10 shall include, but shall not be limited to, real property,
11 savings accounts, stocks and bonds, mortgages and
12 notes, life insurance, interest in a partnership or
13 corporation, tangible personal property, income from
14 employment, future interests whether vested or non-
15 vested, and any other financial interest or source. The
16 court may also require each party to furnish, on the

17 same standard form, information pertaining to all debts
18 and liabilities of the parties. The form used shall contain
19 a statement in conspicuous print that complete disclosure
20 of assets and debts is required by law and
21 deliberate failure to provide complete disclosure as
22 ordered by the court constitutes false swearing. The
23 court may on its own initiative and shall at the request
24 of either party require the parties to furnish copies of
25 all state and federal income tax returns filed by them
26 for the past two years, and may require copies of such
27 returns for prior years.

28 (b) Disclosure forms required under this section shall
29 be filed within sixty days after the service of summons
30 or at such other time as ordered by the court.
31 Information contained on such forms shall be updated
32 on the record to the date of hearing.

33 (c) Information disclosed under this section shall be
34 confidential and may not be made available to any
35 person for any purpose other than the adjudication,
36 appeal, modification or enforcement of judgment of an
37 action affecting the family of the disclosing parties. The
38 court shall include in any order compelling disclosure
39 of assets, such provisions as the court considers necessary
40 to preserve the confidentiality of the information
41 ordered disclosed.

42 (d) Upon the failure by either party timely to file a
43 complete disclosure statement as may be required by
44 this section, the court may accept the statement of the
45 other party as accurate.

46 (e) If any party deliberately or negligently fails to
47 disclose information which may be required by this
48 section and in consequence thereof any asset or assets
49 with a fair market value of five hundred dollars or more
50 is omitted from the final distribution of property, the
51 party aggrieved by such nondisclosure may at any time
52 petition a court of competent jurisdiction to declare the
53 creation of a constructive trust as to all undisclosed
54 assets, for the benefit of the parties and their minor or
55 dependent children, if any, with the party in whose
56 name the assets are held declared the constructive

57 trustee, such trust to include such terms and conditions
58 as the court may determine. The court shall impose the
59 trust upon a finding of a failure to disclose such assets
60 as required under this section.

61 (f) Any assets with a fair market value of five
62 hundred dollars or more which would be considered
63 part of the estate of either or both of the parties if owned
64 by either or both of them at the time of the action, but
65 which was transferred for inadequate consideration,
66 wasted, given away or otherwise unaccounted for by one
67 of the parties, within five years prior to the filing of the
68 petition or length of the marriage, whichever is shorter,
69 shall be presumed to be part of the estate and shall be
70 subject to the disclosure requirement contained in this
71 section. With respect to such transfers the spouse shall
72 have the same right and remedies as a creditor whose
73 debt was contracted at the time the transfer was made
74 under section three, article one, chapter forty of this
75 code. Transfers which resulted in an exchange of assets
76 of substantially equivalent value need not be specifically
77 disclosed where such assets are otherwise identified in
78 the statement of net worth.

79 (g) A person who knowingly provides incorrect
80 information pursuant to the provisions of this section is
81 guilty of false swearing.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§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, and the
4 establishment of paternity, inasmuch as such issues are
5 properly within the jurisdiction of the state of West
6 Virginia. The Legislature of the state of West Virginia,
7 in creating the child advocate office, recognizes the
8 seriousness of family law issues as they affect the health
9 and welfare of the children of this state. The Legislature

10 intends, by the enactment of this article and through the
 11 creation of this office, to specifically assign the highest
 12 priority to these issues. It is the sense of the Legislature
 13 that there must be a state office which, as its primary
 14 function, protects and promotes the best interests of
 15 children; which recognizes the rights and obligations of
 16 all persons involved in family law issues; and which has
 17 the authority and the means to resolve family law issues
 18 fairly and efficiently. Through the establishment of the
 19 child advocate office the Legislature intends to create an
 20 impetus and a mechanism for dealing with the varied
 21 problems associated with support enforcement, thereby
 22 enhancing the health and welfare of our state's children
 23 and their families.

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

27 (1) The enforcement of support obligations owed by a
 28 parent to his or her child or children;

29 (2) The enforcement of support obligations owed by an
 30 individual to his or her spouse or former spouse;

31 (3) Locating parents or spouses who owe a duty to pay
 32 support;

33 (4) Establishing paternity on behalf of minors whose
 34 paternal parentage has not been acknowledged by the
 35 father or otherwise established by law;

36 (5) Obtaining court orders for child and spousal
 37 support; and

38 (6) Assuring that the assistance and services of the
 39 office required to be provided under the provisions of
 40 this chapter will be available to all individuals for whom
 41 such assistance is required or requested.

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

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 children's
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 standards and procedures for the transfer
32 of part or all of the responsibilities for a case from one
33 office to another in situations considered appropriate.

34 (5) Subject to appropriation of funds by the Legisla-
35 ture, install in the office of each children's advocate,
36 adequate computer hardware and software to enable the
37 advocate to utilize word processing and other data
38 processing functions in the preparation of pleadings and
39 other documents required for the proper discharge of
40 the duties of the office.

41 (d) The commissioner of the division of human

42 services shall appoint a nine-person advisory committee,
43 serving without compensation except as provided in
44 subsection (e) of this section, composed of the following:

45 (1) Three public members who are eligible for
46 services with an office of the children's advocate;

47 (2) Three attorneys who are members of the West
48 Virginia state bar with experience in domestic relations
49 law, not more than two of whom may be employees of
50 the department of health and human resources; *Pro-*
51 *vided*, That one of the attorneys appointed shall be a
52 children's advocate selected by the children's advocates
53 throughout the state; and

54 (3) Three human service professionals who provide
55 family counseling, not more than two of whom may be
56 employees of the department of health and human
57 resources.

58 Of the nine members initially appointed, one public
59 member, one attorney and one professional shall be
60 appointed for a term of one year; one public member,
61 one attorney and one professional shall be appointed for
62 a term of two years; and one public member, one
63 attorney and one professional shall be appointed for a
64 term of three years. After the expiration of the initial
65 terms, appointments thereafter shall be made for terms
66 of three years. The commissioner shall fill any vacancies
67 resulting from death or resignation by appointment for
68 the unexpired term. Members of the advisory council
69 may be reappointed.

70 (e) The advisory committee established under subsec-
71 tion (d) of this section shall advise the director in the
72 performance of his or her duties under this section.
73 Advisory committee members shall be reimbursed for
74 their actual expenses for mileage, meals, and, if
75 necessary, lodging.

76 (f) The director shall appoint general counsel for the
77 child advocate office to supervise and assist the child-
78 ren's advocates in the performance of their professional,
79 nonadministrative duties and to promote uniformity in,
80 and increase the quality of, legal services provided by

81 children's advocates throughout the state. Such general
82 counsel shall also serve as counsel to the director. A
83 person appointed as general counsel shall be a member
84 in good standing of the West Virginia state bar.
85 Compensation and expenses of the general counsel shall
86 be fixed by the director and paid by the child advocate
87 office. The position of general counsel shall be a position
88 in the classified service.

ARTICLE 3. CHILDREN'S 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 children's advocate as an employee of the
4 child advocate office;

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

8 (3) To compel the enforcement of support orders,
9 thereby ensuring that persons legally responsible for the
10 care and support of children assume their legal obliga-
11 tions and reduce the financial cost to this state of
12 providing public assistance funds for the care of
13 children.

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

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

1 (a) The child advocate office shall employ twenty-one
2 employees in the position of children's advocate, and the
3 offices of the children's 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 county of Kanawha;
- 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;
- 28 (20) The counties of Berkeley, Jefferson and Morgan;
- 29 and
- 30 (21) The counties of Boone, Lincoln and Wayne.
- 31 (b) Each children's advocate shall be appointed by the
- 32 director of the child advocate office. The children's
- 33 advocates shall be duly qualified attorneys licensed to
- 34 practice in the courts of this state. Children's advocates
- 35 shall be exempted from the appointments in indigent
- 36 cases which would otherwise be required pursuant to
- 37 article twenty-one, chapter twenty-nine of this code.
- 38 (c) Nothing contained herein shall prohibit the
- 39 director from temporarily assigning, from time to time
- 40 as caseload may dictate, a children's advocate from one
- 41 geographical area to another geographical area.
- 42 (d) The children's advocate is an employee of the child

43 advocate office.

§48A-3-3. Duties of the children's advocate.

1 (a) The children's advocate shall supervise and direct
2 the secretarial, clerical and other employees in his or
3 her office in the performance of their duties as such
4 performance affects the delivery of legal services. The
5 children's advocate will provide appropriate instruction
6 and supervision to employees of his or her office who are
7 non-lawyers, concerning matters of legal ethics and
8 matters of law, in accordance with applicable state and
9 federal statutes, rules, and regulations.

10 (b) In accordance with the requirements of rule 5.4(c)
11 of the rules of professional conduct as promulgated and
12 adopted by the supreme court of appeals, the children's
13 advocate shall not permit a non-lawyer who is employed
14 by the department of health and human resources in a
15 supervisory position over the children's advocate to
16 direct or regulate the advocate's professional judgment
17 in rendering legal services to clients in accordance with
18 the provisions of this chapter; nor shall any non-lawyer
19 employee of the department attempt to direct or
20 regulate the advocate's professional judgment.

21 (c) The children's advocate shall make available to the
22 public an informational pamphlet, designed in consul-
23 tation with the director. The informational pamphlet
24 shall explain the procedures of the court and the
25 children's advocate; the duties of the children's advocate;
26 the rights and responsibilities of the parties; and the
27 availability of human services in the community. The
28 informational pamphlet shall be provided as soon as
29 possible after the filing of a complaint or other initiating
30 pleading. Upon request, a party to a domestic relations
31 proceeding shall receive an oral explanation of the
32 informational pamphlet from the office of the children's
33 advocate.

34 (d) The children's advocate shall act to establish the
35 paternity of every child born out of wedlock for whom
36 paternity has not been established, when such child's
37 primary caretaker is an applicant for or recipient of aid
38 to families with dependent children, and when such

39 primary caretaker has assigned to the division of human
40 services any rights to support for the child which might
41 be forthcoming from the putative father: *Provided*, That
42 if the children's advocate is informed by the secretary
43 of the department of health and human resources or his
44 or her authorized employee that it has been determined
45 that it is against the best interest of the child to establish
46 paternity, the children's advocate shall decline to so act.
47 The children's advocate, upon the request of any
48 primary caretaker of a child born out of wedlock,
49 regardless of whether such primary caretaker is an
50 applicant or recipient of aid to families with dependent
51 children, shall undertake to establish the paternity of
52 such child.

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

77 (f) The children's advocate shall pursue the enforce-
78 ment of support orders through the withholding from
79 income of amounts payable as support:

80 (1) Without the necessity of an application from the
81 obligee in the case of a support obligation owed to an
82 obligee to whom services are already being provided
83 under the provisions of this chapter; and

84 (2) On the basis of an application for services in the
85 case of any other support obligation arising from a
86 support order entered by a court of competent
87 jurisdiction.

88 (g) The children's advocate may decline to commence
89 an action to obtain an order of support under the
90 provisions of section one, article five of this chapter if
91 an action for divorce, annulment, or separate maintenance is pending, or the filing of such action is imminent, and such action will determine the issue of support for the child: *Provided*, That such action shall be deemed to be imminent if it is proposed by the obligee to be commenced within the twenty-eight days next following a decision by the children's advocate that an action should properly be brought to obtain an order for support.

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

§48A-3-6. Investigations of support 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 children's advocate shall once every
4 three years or upon receipt of a written request from
5 an obligee or an obligor made not more than once by
6 a party each two years, examine the records and conduct
7 any investigation considered necessary to determine
8 whether the child support amount should be increased
9 or decreased in view of a temporary or permanent
10 change in physical custody of the child which the court
11 has not ordered, increased need of the child or changed
12 financial conditions, unless:

13 (1) If a child is being supported, in whole or in part,
14 by assistance payments from the division of human
15 services, the children's advocate has determined that
16 such a review would not be in the best interests of the
17 child and neither parent has requested a review;

18 (2) In the case of any other order, neither parent has
19 requested a review.

20 (b) Within sixty days after receipt of a request under
21 this subdivision, the office of the children's advocate
22 shall complete its investigation and make any resulting
23 recommendations and supporting documents available
24 as required in section three of this article.

25 (c) Before a hearing on a proposed modification, the
26 office shall notify both parties of the proposed modifi-
27 cation and afford the parties an opportunity for review
28 and comment.

29 (d) The office shall petition the court for modification
30 of the amount of a child support order if modification
31 is determined to be necessary under subsection (a). A
32 written report and recommendation shall accompany
33 the petition.

34 (e) As used in this section, "changed financial condi-
35 tions" means increases or decreases in the resources
36 available to either party from any source. Changed
37 financial conditions includes, but is not limited to, the

38 application for or receipt of any form of public assist-
39 ance payments, unemployment compensation and
40 workers' compensation.

§48A-3-8. Compensation; expenses.

1 The salary of a children's advocate shall be not less
2 than thirty-five thousand dollars per year, and shall be
3 fixed by the director, who shall take into consideration
4 ability, performance of duty and experience. The
5 compensation and expenses of the employees of the office
6 and all operating expenses incurred by the office shall
7 be fixed by the director and paid by the child advocate
8 office.

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

**§48A-4-1. Appointment of family law masters; term of
office; vacancy; qualifications; removal;
compensation and expenses; budget; loca-
tion of offices; matters to be heard by
master; fees for hearings; notice of master's
hearing; content of notice; determination of
issues by consent; hearing.**

1 (a) On or before the fifteenth day of September, one
2 thousand nine hundred eighty-six, the governor shall
3 appoint family law masters in such numbers and to
4 serve such areas of the state as provided for under the
5 provisions of this article, and such initial appointments
6 of individuals as family law masters shall be for a term
7 ending on the thirtieth day of June, one thousand nine
8 hundred ninety. Thereafter, the length of the term of the
9 office of family law master shall be four years, with
10 terms commencing on the first day of July, one thousand
11 nine hundred ninety, and on a like date in every fourth
12 year thereafter, and ending on the thirtieth day of June,
13 one thousand nine hundred ninety-four, and on a like
14 date in every fourth year thereafter. Upon the expira-
15 tion of his or her term, a family law master may
16 continue to perform the duties of the office until his or
17 her successor is appointed, or for sixty days after the
18 date of the expiration of the master's term, whichever
19 is earlier. If from any cause a vacancy shall occur in the
20 office of family law master, the governor shall, within

21 thirty days after such vacancy occurs, fill such vacancy
 22 by appointment for the unexpired term: *Provided*, That
 23 if the remaining portion of the unexpired term to be
 24 filled is less than one year, the governor may, in his
 25 discretion, simultaneously appoint an individual to the
 26 unexpired term and to the next succeeding full four-
 27 year term. An individual may be reappointed to
 28 succeeding terms as a family law master to serve in the
 29 same or a different region of the state.

30 (b) No individual may be appointed to serve as a
 31 family law master unless he or she is a member in good
 32 standing of the West Virginia state bar.

33 (c) Removal of a master during the term for which he
 34 or she is appointed shall be only for incompetency,
 35 misconduct, neglect of duty, or physical or mental
 36 disability.

37 (d) A family law master may not engage in any other
 38 business, occupation, or employment inconsistent with
 39 the expeditious, proper, and impartial performance of
 40 his or her duties as a judicial officer. Family law
 41 masters who do not engage in the practice of criminal
 42 law shall be exempted from the appointments in
 43 indigent cases which would otherwise be required
 44 pursuant to article twenty-one, chapter twenty-nine of
 45 this code.

46 (e) All family law masters, and all necessary clerical
 47 and secretarial assistants employed in the offices of
 48 family law masters shall be deemed to be officers and
 49 employees in the judicial branch of state government.
 50 The director of the child advocate office and the
 51 commissioner of the department of human services shall
 52 enter into an agreement with the administrative office
 53 of the supreme court of appeals whereby the office and
 54 the department shall contract to pay the administrative
 55 office of the supreme court of appeals for the services
 56 of the family law masters required to be furnished
 57 under the provisions of this chapter which are not
 58 otherwise payable from the family law masters fund
 59 created under the provisions of section twenty-two,
 60 article two of this chapter.

61 (4) Each county commission of this state shall enter
62 into an agreement with the administrative office of the
63 supreme court of appeals whereby the administrative
64 office of the supreme court of appeals shall contract to
65 pay to the county commission a reasonable amount as
66 rent for premises furnished by the county commission
67 to the family law master and its staff, which premises
68 shall be adequate for the conduct of the duties required
69 of such master under the provisions of this chapter.

70 (f) A family law master appointed under the provi-
71 sions of this article shall receive as full compensation for
72 his or her services an annual salary of thirty-five
73 thousand dollars. The secretary-clerk of the family law
74 master shall receive an annual salary of fifteen thousand
75 dollars and shall be appointed by the family law master
76 and serve at his or her will and pleasure. Disbursement
77 of salaries shall be made by or pursuant to the order
78 of the director of the administrative office of the
79 supreme court of appeals.

80 (g) Family law masters serving under the provisions
81 of this article shall be allowed their actual and necessary
82 expenses incurred in the performance of their duties.
83 Such expenses and compensation shall be determined
84 and paid by the director of the administrative office of
85 the supreme court of appeals under such regulations as
86 he or she may prescribe with the approval of the
87 supreme court of appeals.

88 (h) The offices of the family law masters shall be
89 distributed geographically so as to provide an office of
90 the family law master for each of the following regions:

- 91 (1) The counties of Brooke, Hancock and Ohio;
- 92 (2) The counties of Marshall, Tyler, and Wetzel;
- 93 (3) The counties of Pleasants, Ritchie, Wirt and Wood;
- 94 (4) The counties of Calhoun, Jackson and Roane;
- 95 (5) The counties of Mason and Putnam;
- 96 (6) The county of Cabell;
- 97 (7) The counties of McDowell and Wyoming;

- 98 (8) The counties of Logan and Mingo;
 - 99 (9) The county of Kanawha;
 - 100 (10) The county of Raleigh;
 - 101 (11) The counties of Mercer and Summers;
 - 102 (12) The counties of Fayette and Nicholas;
 - 103 (13) The counties of Greenbrier, Pocahontas and
 - 104 Monroe;
 - 105 (14) The counties of Braxton, Clay, Gilmer and
 - 106 Webster;
 - 107 (15) The counties of Doddridge, Harrison, Lewis and
 - 108 Upshur;
 - 109 (16) The counties of Marion and Taylor;
 - 110 (17) The counties of Monongalia and Preston;
 - 111 (18) The counties of Barbour, Randolph, and Tucker;
 - 112 (19) The counties of Grant, Hampshire, Hardy,
 - 113 Mineral and Pendleton;
 - 114 (20) The counties of Berkeley, Jefferson and Morgan;
 - 115 and
 - 116 (21) The counties of Boone, Lincoln and Wayne.
- 117 The governor shall appoint two masters to the office
118 of the family law master for the region of Kanawha
119 County. In each of the other regions defined by this
120 subsection, the governor shall appoint one person as
121 family law master from such region. Nothing contained
122 herein shall prohibit the chief justice of the supreme
123 court of appeals from temporarily assigning, from time
124 to time as caseload may dictate, a family law master
125 from one geographical region to another geographical
126 region.
- 127 (i) A circuit court or the chief judge thereof shall
128 refer to the master the following matters for hearing to
129 be conducted pursuant to section two of this article:
130 *Provided*, That on its own motion or upon motion of a
131 party, the circuit judge may revoke the referral of a
132 particular matter to a master if the master is recused,

133 if the matter is uncontested, or for other good cause, or
134 if the matter will be more expeditiously and inexpen-
135 sively heard by the circuit judge without substantially
136 affecting the rights of parties in actions which must be
137 heard by the circuit court:

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

140 (2) All actions to establish paternity under the
141 provisions of article six of this chapter: *Provided*, That
142 all actions wherein either or both of the parties have
143 demanded a trial by jury of the law and the facts shall
144 be heard by the circuit court;

145 (3) All motions for pendente lite relief affecting child
146 custody, visitation, child support or spousal support,
147 wherein either party has requested such referral or the
148 court on its own motion in individual cases or by general
149 order has referred such motions to the master: *Provided*,
150 That if the circuit court determines, in its discretion,
151 that the pleadings raise substantial issues concerning
152 the identification of separate property or the division of
153 marital property which may have a bearing on an
154 award of support, the court may decline to refer a
155 motion for support pendente lite to the family law
156 master;

157 (4) All petitions for modification of an order involving
158 child custody, child visitation, child support or spousal
159 support;

160 (5) All actions for divorce, annulment or separate
161 maintenance brought pursuant to article two, chapter
162 forty-eight of this code: *Provided*, That an action for
163 divorce, annulment or separate maintenance which does
164 not involve child custody or child support shall be heard
165 by the circuit judge if, at the time of the filing of the
166 action, the parties file a written property settlement
167 agreement which has been signed by both parties;

168 (6) All actions wherein an obligor is contesting the
169 enforcement of an order to support through the with-
170 holding from income of amounts payable as support or
171 is contesting an affidavit of accrued support, filed with

172 a circuit clerk, which seeks to collect arrearages;

173 (7) All actions commenced under the provisions of
174 article seven of this chapter or under the provisions of
175 the revised uniform reciprocal enforcement of support
176 act of any other state;

177 (8) Proceedings for the enforcement of support,
178 custody, or visitation orders: *Provided*, That contempt
179 actions shall be heard by a circuit judge.

180 (j) The initial fees for hearings before a master shall
181 be paid before the commencement of the hearing, and
182 additional hourly fees shall be paid at the conclusion of
183 the hearing, unless a party is excused from payment
184 thereof under the provisions of section one, article two,
185 chapter fifty-nine of this code. Such initial fees may be
186 paid at any time prior to such hearing, but shall not be
187 required at the time the action is filed.

188 (k) Fees for hearings before a master shall be taxed
189 as court costs, which costs may be assessed against
190 either party or apportioned between the parties, in the
191 discretion of the master. The assessment of court costs
192 shall be made at the conclusion of the hearing and
193 included as findings in each case of a master's recom-
194 mended order. The fees for hearings before a master
195 shall be as follows:

196 (1) For an action to establish an order of support, fifty
197 dollars;

198 (2) For an action to establish paternity, one hundred
199 dollars;

200 (3) For a motion for pendente lite relief affecting
201 custody, visitation, child support or spousal support,
202 fifty dollars;

203 (4) For a petition for modification of an order
204 involving child custody, child visitation, child support or
205 spousal support, fifty dollars: *Provided*, That if the
206 matter is contested, the fee shall be fifty dollars for the
207 first hour or any portion thereof, and thirty dollars per
208 hour for each subsequent hour or any portion thereof;

209 (5) For an uncontested divorce action, fifty dollars;

210 (6) For a proceeding for the enforcement of an order,
211 fifty dollars: *Provided*, That if the matter is contested,
212 the fee shall be fifty dollars for the first hour or any
213 portion thereof, and thirty dollars per hour for each
214 subsequent hour or any portion thereof;

215 (7) For a contested divorce action matured for final
216 hearing, fifty dollars for the first hour or any portion
217 thereof, and thirty dollars per hour for each subsequent
218 hour or any portion thereof.

219 (l) Persons entitled to notice of a master's hearing
220 shall be timely informed of:

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

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

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

225 (m) The master shall give all interested parties
226 opportunity for the submission and consideration of
227 facts, arguments, offers of settlement or proposals of
228 adjustment when time, the nature of the proceedings
229 and the public interest permit. To the extent that the
230 parties are unable to settle or compromise a controversy
231 by consent, the master shall provide the parties a
232 hearing and make a recommended order in accordance
233 with the provisions of sections two and four of this
234 article.

235 (n) The master who presides at the reception of
236 evidence pursuant to section two of this article shall
237 prepare the default order or make and enter the
238 pendente lite order provided for in section three of this
239 article, or make the recommended order required by
240 section four of this article, as the case may be. Except
241 to the extent required for disposition of ex parte matters
242 as authorized by this chapter, a master may not consult
243 a person or party on a fact in issue, unless on notice and
244 opportunity for all parties to participate; nor shall the
245 master attempt to supervise or direct an employee or
246 agent engaged in the performance of investigative or
247 prosecuting functions for a prosecuting attorney, the
248 division of human services or any other agency or

249 political subdivision of this state.

§48A-4-2. Hearing 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 taking of evidence.
6 The 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, receive relevant evidence and establish
20 a record;

21 (2) Rule on motions for discovery and offers of proof;

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 pre-trial conferences for the settlement or
26 simplification of issues and enter time frame orders
27 which shall include, but not be limited to, discovery cut-
28 offs, exchange of witness lists, and agreements on
29 stipulations, contested issues, and hearing schedules;

30 (6) Make and enter temporary orders on procedural
31 matters, including, but not limited to, substitution of
32 counsel, amendment of pleadings, requests for hearings
33 and other similar matters;

34 (7) Accept voluntary acknowledgements of support

35 liability or paternity;

36 (8) Accept stipulated agreements;

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

40 (10) Recommend orders in accordance with the
41 provisions of section four of this article;

42 (11) Require the issuance of subpoenas and subpoenas
43 duces tecum, issue writs of attachment, hold hearings
44 in aid of execution and propound interrogatories in aid
45 of execution, and fix bond or other security in connection
46 with an action for enforcement in a child or spousal
47 support matter; and

48 (12) Take other action authorized by general order of
49 the circuit court or the chief judge thereof consistent
50 with the provisions of this chapter.

51 (d) Except as otherwise provided by law, a moving
52 party has the burden of proof on a particular question
53 presented. Any oral or documentary evidence may be
54 received, but the master shall exclude irrelevant,
55 immaterial, or unduly repetitious evidence. A party is
56 entitled to present his or her case or defense by oral or
57 documentary evidence, to submit rebuttal evidence, and
58 to conduct such cross-examination as may be required
59 for a full and true disclosure of the facts. In determining
60 claims for money due or the amount of payments to be
61 made, when a party will not be prejudiced thereby, the
62 master may adopt procedures for the submission of all
63 or part of the evidence in written form.

64 (e) Hearings before a master shall be recorded
65 electronically. When requested by either of the parties,
66 a master shall provide a duplicate copy of the tape or
67 other electronic recording medium of each hearing held.
68 The party requesting the copy shall pay to the master
69 an amount equal to the actual cost of the tape or other
70 medium or the sum of five dollars, whichever is greater.
71 Unless otherwise ordered by the court, the preparation
72 of a transcript and the payment of the cost thereof shall
73 be the responsibility of the party requesting the

75 transcript.

76 (f) The recording of the hearing or the transcript of
77 testimony, as the case may be, and the exhibits, together
78 with all papers and requests filed in the proceeding,
79 constitute the exclusive record for recommending an
80 order in accordance with section four of this article, and
81 on payment of lawfully prescribed costs, shall be made
82 available to the parties. When a master's final recom-
83 mended order rests on official notice of a material fact
84 not appearing in the evidence in the record, a party is
85 entitled, on timely request, to an opportunity to show the
86 contrary.

**§48A-4-2a. Acts or failures to act in the physical presence
of family law masters.**

1 (a) If in the master's presence a party, witness or
2 other person conducts himself in a manner which would
3 constitute direct contempt if committed in the presence
4 of a circuit judge, the master shall halt any proceeding
5 which may be in progress and inform the person that
6 their conduct constitutes direct contempt and give notice
7 of the procedures and possible dispositions which may
8 result.

9 (b)(1) If a circuit judge is sitting in the same county
10 in which the conduct occurred, or is otherwise available,
11 the alleged contemnor shall be immediately taken before
12 the circuit judge. Disposition of these matters shall be
13 given priority over any other matters, with the excep-
14 tion of a criminal trial in progress.

15 (2) If a circuit judge is unavailable then the master
16 shall schedule a hearing before the circuit court and the
17 alleged contemnor shall be advised, on the record, of the
18 time and place of the hearing. The master may elect,
19 in his or her discretion, to obtain a warrant for the
20 arrest of the alleged contemnor from the magistrate
21 court on the charge of contempt with the matter to be
22 heard by the circuit court.

23 (c) At the hearing, the circuit court shall be advised
24 of the charges, receive the evidence and rule in the same
25 manner as would be appropriate if the conduct com-

26 plained of occurred in the physical presence of a circuit
27 judge. In addition to other sanctions the court may
28 award attorneys fees and costs.

29 (d) Prior to or during any hearing before a master,
30 if the master determines that a situation exists which
31 warrants the presence of security during such hearing,
32 the master shall inform the sheriff of the need for such
33 security and the time and place of the hearing, and the
34 sheriff shall assign a deputy to act as bailiff during such
35 hearing.

§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 prepare a
5 default order for entry by the circuit judge, which order
6 shall fix support in an amount at least equal to the
7 amount paid as public assistance under section four,
8 article three, chapter nine of this code if the obligee or
9 custodian receives public assistance, or in an amount at
10 least equal to the amount that would be paid as public
11 assistance if the obligee or custodian were eligible to
12 receive public assistance, unless the family law master
13 has sufficient information in the record so as to
14 determine the amount to be fixed in accordance with the
15 child support guidelines.

16 (b) A master who presides at a hearing under the
17 provisions of section two of this article is authorized to
18 make and enter pendente lite support and custody
19 orders which, when entered, shall be enforceable and
20 have the same force and effect under law as pendente
21 lite support orders made and entered by a judge of the
22 circuit court, unless and until such support orders are
23 modified, vacated, or superseded by an order of the
24 circuit court.

25 (c) All orders prepared by a master shall provide for
26 automatic withholding from income of the obligor if
27 arrearages in support occur, if no such provision already
28 exists in prior orders or if the existing order as it relates
29 to withholding is not in compliance with applicable law.

§48A-4-4. Recommended 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 pursu-
5 ant to section two of this article shall recommend an
6 order and findings of fact and conclusions of law to the
7 circuit court within ten days following the close of the
8 evidence. Before the recommended order is made, the
9 master may, in his discretion, require the parties to
10 submit proposed findings and conclusions and the
11 supporting reasons therefor.

12 (c) The master shall sign and send the recommended
13 order, any separate document containing the findings of
14 fact and conclusions of law and the notice of recom-
15 mended order as set forth in section four-a of this article
16 to the attorney for each party, or if a party is unrepre-
17 sented, directly to the party, in the same manner as
18 pleadings subsequent to an original complaint are
19 served in accordance with rule five of the rules of civil
20 procedure for trial courts of record. The master shall
21 file the recommended order and the record in the office
22 of the circuit clerk prior to the expiration of the ten day
23 period during which exceptions can be filed.

24 (d) A copy of any supporting documents or a sum-
25 mary of supporting documents, prepared or used by the
26 children's advocate or an employee of the child advocate
27 office, and all documents introduced into evidence
28 before the master, shall be made available to the
29 attorney for each party and to each of the parties before
30 the circuit court takes any action on the recom-
31 mendation.

32 (e) All recommended orders of the master shall
33 include the statement of findings of fact and conclusions
34 of law, and the reasons or basis therefor, on all the
35 material issues of fact, law, or discretion presented on
36 the record; and the appropriate sanction, relief, or
37 denial thereof.

§48A-4-4a. Form of notice of recommended order.

1 IN THE CIRCUIT COURT OF _____ COUNTY,
2 WEST VIRGINIA,

3
4 Plaintiff,

5 vs. CIVIL ACTION NO. _____

6
7 Defendant.

8 NOTICE OF RECOMMENDED ORDER

9 The undersigned family law master hereby recom-
10 mends the enclosed order to the circuit court of
11 _____ county. If you wish to file objections
12 to this decision, you must file a written petition in
13 accordance with the provisions of chapter 48A-4-8 of the
14 West Virginia Code within a period of ten days ending
15 on _____, 1990, with the circuit clerk of
16 _____ county and send a copy to counsel for
17 the opposing party or if the party is unrepresented to
18 the party, and to the office of the family law master
19 located at _____.

20 If no written petition for review is filed by , 1990, then
21 the recommended order will be sent to the circuit judge
22 assigned to this case. A recommended order which is not
23 signed by a party, or counsel for a party who is
24 represented, by the end of the ten day period will still
25 be sent to the circuit judge for entry.

26 YOUR FAILURE TO SIGN THE ORDER AS HAV-
27 ING BEEN INSPECTED OR APPROVED WILL NOT
28 DELAY THE ENTRY THEREOF.

29
30 Family Law Master

**§48A-4-5. Orders to be entered by circuit court
exclusively.**

1 With the exception of pendente lite support and
2 custody orders entered by a master in accordance with
3 the provisions of section three of this article, and
4 procedural orders entered pursuant to the provisions of
5 section two of this article, an order imposing sanctions

6 or granting or denying relief may not be made and
7 entered except by a circuit court within the jurisdiction
8 of said court and as authorized by law.

§48A-4-6. Circuit court review of master's action or recommended order.

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

§48A-4-7. Procedure for review by circuit court.

1 (a) Within ten days after the master's recommended
2 order, any separate document with findings of fact and
3 conclusions of law and the notice of recommended order
4 is served on the parties as set forth in section four of
5 this article, any party may file exceptions thereto in a
6 petition requesting that the action by the master be
7 reviewed by the circuit court. Failure to timely file the
8 petition shall constitute a waiver of exceptions, unless
9 the petitioner, prior to the expiration of the ten day
10 period, moves for and is granted an extension of time
11 from the circuit court. At the time of filing the petition,
12 a copy of the petition for review shall be served on all
13 parties to the proceeding, in the same manner as
14 pleadings subsequent to an original complaint are
15 served under rule five of the rules of civil procedure for
16 trial courts of record.

17 (b) Not more than ten days after the filing of the
18 petition for review, a responding party wishing to file
19 a cross-petition that would otherwise be untimely may
20 file, with proof of service on all parties, a cross-petition
21 for review.

§48A-4-8. Form of petition for review.

1 (a) The petition for review shall contain a list of
2 exceptions in the form of questions presented for review,
3 expressed in the terms and circumstances of the case,

4 designating and pointing out the errors complained of
5 with reasonable certainty, so as to direct the attention
6 of the circuit court specifically to them, but without
7 unnecessary detail. The statement of questions should be
8 short and concise and should not be argumentative or
9 repetitious. The statement of a question presented will
10 be deemed to comprise every subsidiary question fairly
11 included therein. Only the questions set forth in the
12 petition or fairly included therein will be considered by
13 the court. Parts of the master's report not excepted to
14 are admitted to be correct, not only as regards the
15 principles, but as to the evidence, upon which they are
16 founded.

17 (b) The circuit court may require, or a party may
18 choose to submit with the petition for review a brief in
19 support thereof, which should include a direct and
20 concise argument amplifying the reasons relied upon for
21 modification of the master's recommended order and
22 citing the constitutional provisions, statutes and regula-
23 tions which are applicable.

§48A-4-9. Answer 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 answer disclosing
3 any matter or ground why the recommended order of
4 the master should not be modified by the court in the
5 manner sought by the petition. The judge may require,
6 or a party may choose to submit with the answer a brief
7 in opposition to the petition, which should include a
8 direct and concise argument in support of the master's
9 recommended order and citing the constitutional
10 provisions, statutes and regulations which are
11 applicable.

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

14 (c) Any party may file a supplemental brief at any
15 time while a petition for review is pending, calling
16 attention to new cases or legislation or other intervening
17 matter not available at the time of the party's last filing.

§48A-4-10. Circuit court review of master's recommended order.

1 (a) The circuit court shall proceed to a review of the
2 recommended order of the master when:

3 (1) No petition has been filed within the time allowed,
4 or the parties have expressly waived the right to file a
5 petition;

6 (2) A petition and an answer in opposition have been
7 filed, or the time for filing an answer in opposition has
8 expired, or the parties have expressly waived the right
9 to file an answer in opposition, as the case may be.

10 (b) To the extent necessary for decision and when
11 presented, the circuit court shall decide all relevant
12 questions of law, interpret constitutional and statutory
13 provisions, and determine the appropriateness of the
14 terms of the recommended order of the master.

15 (c) The circuit court shall examine the recommended
16 order of the master, along with the findings and
17 conclusions of the master, and may enter the recom-
18 mended order, may recommit the case, with instruc-
19 tions, for further hearing before the master or may, in
20 its discretion, enter an order upon different terms, as
21 the ends of justice may require. The circuit court shall
22 not follow the recommendation, findings, and conclu-
23 sions of a master found to be:

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

26 (2) Contrary to constitutional right, power, privilege,
27 or immunity;

28 (3) In excess of statutory jurisdiction, authority, or
29 limitations, or short of statutory right;

30 (4) Without observance of procedure required by law;

31 (5) Unsupported by substantial evidence; or

32 (6) Unwarranted by the facts.

33 (d) In making its determinations under this section,
34 the circuit court shall review the whole record or those
35 parts of it cited by a party. If the circuit court finds that

36 a master's recommended order is deficient as to matters
37 which might be affected by evidence not considered or
38 inadequately developed in the master's recommended
39 order, the court may recommit the recommended order
40 to the master, with instructions indicating the court's
41 opinion, or the circuit court may proceed to take such
42 evidence without recommitting the matter.

43 (e) The order of the circuit court entered pursuant to
44 the provisions of subsection (d) of this section shall be
45 entered not later than ten days after the time for filing
46 pleadings or briefs has expired or after the filing of a
47 notice or notices waiving the right to file such pleading
48 or brief.

49 (f) If a case is recommitted by the circuit court, the
50 master shall retry the matter within twenty days.

51 (g) At the time a case is recommitted, the circuit
52 court shall enter appropriate pendente lite orders
53 awarding custody, visitation, child support, spousal
54 support or such other temporary relief as the circum-
55 stances of the parties may require.

**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
2 obtain an order for the support of a minor child when:

3 (1) Such child has a parent and child relationship
4 with 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 health and human resources,
25 when the department is providing assistance on behalf
26 of the child in the form of aid to families with dependent
27 children, and an assignment of any right to support has
28 been 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) Every order of support heretofore or hereafter
38 entered or modified under the provisions of this section
39 shall include a provision for the income withholding in
40 accordance with the provisions of section fifteen-a or
41 fifteen-b, article two, chapter forty-eight of this code.

42 (f) At any time after the entry of an order for support,
43 the court may, upon the verified petition of an obligee
44 or the obligor, revise or alter such order, and make a
45 new order, as the altered circumstances or needs of a
46 child, an obligee, or the obligor may render necessary
47 to meet the ends of justice.

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

1 (a) The withholding from an obligor's income of

2 amounts payable as spousal or child support shall be
3 enforced by the children's advocate in accordance with
4 the provisions of this section. Every support order
5 heretofore or hereafter entered by a circuit court or a
6 magistrate of this state and every support order entered
7 by a court of competent jurisdiction of another state
8 shall be considered to provide for an order of income
9 withholding in accordance with the provisions of section
10 fifteen-a or fifteen-b, article two, chapter forty-eight of
11 this code, notwithstanding the fact that such support
12 order does not in fact provide for such an order of
13 withholding.

14 (b)(1) In any case in which immediate income with-
15 holding is not required, the children's advocate shall
16 cause the mailing of a notice to the obligor pursuant to
17 this section when the support payments required by the
18 order are in arrears a specific number of days, as
19 follows:

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

24 (B) If the order requires support to be paid in weekly
25 or bi-weekly installments, the notice shall be sent on the
26 day when the support payments are twenty-eight days
27 in arrears.

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

33 (c) If notice required by subsection (b) of this section
34 is appropriate, the children's advocate shall determine
35 the time for a meeting between the obligor and the
36 children's advocate and the time for a hearing before the
37 family law master, and shall then set forth in such
38 notice the times and places at which the meeting and
39 hearing will be held if withholding is contested. The
40 meeting and hearing may be scheduled on the same
41 date, but in no case shall the meeting with the advocate

42 be scheduled less than fifteen days after the date the
 43 notice is mailed nor shall the hearing before the master
 44 be scheduled more than twenty-one days after the date
 45 the notice is mailed. The children's advocate shall send
 46 such notice by first class mail to the delinquent obligor.
 47 The notice shall inform the delinquent obligor of the
 48 following:

49 (1) The amount owed;

50 (2) That it is proposed that there be withholding from
 51 the obligor's income of amounts payable as support, and
 52 that if withholding is uncontested, or is contested but
 53 determined appropriate, the amount withheld will be
 54 equal to the amount required under the terms of the
 55 current support order, plus amounts for any outstanding
 56 arrearages;

57 (3) An identification of the type or types of income
 58 from which amounts payable as support will be with-
 59 held, and a statement of the amounts proposed to be
 60 withheld, expressed in meaningful terminology such as
 61 dollar amounts or a percentage of disposable earnings,
 62 as may be appropriate for the type of income involved;

63 (4) That the withholding will apply to the obligor's
 64 present source of income and to any future source of
 65 income;

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

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

72 (7) That if the obligor wishes to agree to withholding
 73 that he or she should notify the children's advocate, in
 74 writing, within fourteen days from the date of the notice
 75 in order to cancel a scheduled meeting with the office
 76 of the children's advocate and a hearing with the family
 77 law master;

78 (8) That if the obligor fails to respond to the notice
 79 or fails to appear at the meeting or hearing after

80 responding to the notice, withholding will automatically
81 occur as described in the notice;

82 (9) That if the obligor desires to contest the withhold-
83 ing on the grounds that the amount to be withheld is
84 incorrect or that withholding is not proper because of
85 mistakes of fact, he or she must, within fourteen days
86 of the date of the notice, inform the children's advocate
87 in writing of the reasons why the proposed withholding
88 is contested;

89 (10) That a mistake of fact exists only when there is
90 an error in the amount of current or overdue support
91 claimed in the notice, there is a mistake as to the
92 identity of the obligor, or the amount of the proposed
93 withholding exceeds the amount permitted to be
94 withheld under applicable federal or state law;

95 (11) That matters such as lack of visitation, inappro-
96 priateness of the support award, or changed financial
97 circumstances of the obligee or the obligor will not be
98 considered at any hearing held pursuant to the notice,
99 but may be raised by the filing of a separate petition;

100 (12) That if the obligor contests the withholding, in
101 writing, a meeting with the children's advocate will be
102 held at a time and place set forth in the notice, for the
103 purpose of attempting to settle any issues which are
104 contested;

105 (13) That if the meeting with the children's advocate
106 fails to resolve the issues being contested, a hearing
107 before the family law master will be held at a time and
108 place set forth in the notice, and that following such
109 hearing, the master will make a recommended order to
110 the circuit court;

111 (14) That a master's recommended order as to with-
112 holding will become effective when it is confirmed and
113 entered by the circuit court, and that if the obligor
114 disagrees with the master's recommended order, he or
115 she will be given the opportunity to make objections
116 known to the circuit court; and

117 (15) That if, while the withholding is being contested,
118 it is determined that the obligor is in arrears in an

119 amount equal to or greater than one month's support
 120 obligation, but the amount of the arrearage is disputed,
 121 then income withholding for the current payment of
 122 support will be instituted, and may not be stayed
 123 pending a final determination as to the amount of
 124 arrearages due.

125 (d) Withholding should occur when the support order
 126 provides for immediate income withholding, or if
 127 immediate income withholding is not so provided, then
 128 after entry of the master's recommended order by the
 129 circuit court. In any case where withholding should
 130 occur, the source of income shall proceed to withhold so
 131 much of the obligor's income as is necessary to comply
 132 with the order authorizing such withholding, up to the
 133 maximum amount permitted under applicable law.
 134 Such withholding, unless otherwise terminated under
 135 the provisions of this section, shall apply to any
 136 subsequent source of income or any subsequent period
 137 of time during which income is received by the obligor.

138 (e) Notwithstanding any other provision of this code
 139 to the contrary which provides for a limitation upon the
 140 amount which may be withheld from earnings through
 141 legal process, the amount of an obligor's aggregate
 142 disposable earnings for any given workweek which can
 143 be withheld as support payments is to be determined in
 144 accordance with the provisions of this subsection, as
 145 follows:

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

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

155 (A) When the obligor is supporting another spouse or
 156 dependent child other than the spouse or child for whom
 157 the proposed withholding is being sought, the amount
 158 withheld may not exceed fifty percent of the obligor's

159 disposable earnings for that week; and

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

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

167 (A) Where the obligor is supporting another spouse or
168 dependent child other than the spouse or child for whom
169 the proposed withholding is being sought, the amount
170 withheld may not exceed fifty-five percent of the
171 obligor's disposable earnings for that week; and

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

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

184 (5) The provisions of this subsection shall apply
185 directly to the withholding of disposable earnings of an
186 obligor regardless of whether the obligor is paid on a
187 weekly, bi-weekly, monthly or other basis.

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

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

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

217 (2) That the source of income must send the amount
 218 to be withheld from the obligor's income to the child
 219 advocate office within ten days of the date the obligor
 220 is paid;

221 (3) That, in addition to the amount withheld under the
 222 provisions of subdivision (1) of this subsection, the source
 223 of income may deduct a fee, not to exceed fifty cents,
 224 for administrative costs incurred by the source of
 225 income, for each withholding;

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

228 (5) That the source of income is subject to a fine for
 229 discharging an obligor from employment, refusing to
 230 employ, or taking disciplinary action against any obligor
 231 because of the withholding;

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

237 (7) That the withholding under the provisions of this
238 section shall have priority over any other legal process
239 under the laws of this state against the same income,
240 and shall be effective despite any exemption that might
241 otherwise be applicable to the same income;

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

247 (9) That the source of income must implement with-
248 holding no later than the first pay period or first date
249 for payment of income that occurs after fourteen days
250 following the date the notice to the source of income was
251 mailed; and

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

258 (g) The director shall, by administrative rule, estab-
259 lish procedures for promptly refunding to obligors
260 amounts which have been improperly withheld under
261 the provisions of this section.

262 (h) A source of income must send the amount to be
263 withheld from the obligor's income to the child advocate
264 office and must notify the child advocate office of the
265 date of withholding, within ten days of the date the
266 obligor is paid.

267 (i) 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 admi-
270 nistrative costs incurred by the source of income, for
271 each withholding.

272 (j) 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 (k) 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 (l) 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 (m) 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 (n) A source of income is liable to an obligee, includ-
 296 ing the state of West Virginia or the department of
 297 health and human resources where appropriate, for any
 298 amount which the source of income fails to withhold
 299 from income due an obligor following receipt by such
 300 source of income of proper notice under subsection (f)
 301 of this section: *Provided*, That a source of income shall
 302 not be required to vary the normal pay and disburse-
 303 ment cycles in order to comply with the provisions of
 304 this section.

305 (o) That support collection under the provisions of this
 306 section shall have priority over any other legal process
 307 under the laws of this state against the same income,
 308 and shall be effective despite any exemption that might
 309 otherwise be applicable to the same income.

310 (p) Any source of income who discharges from
 311 employment, refuses to employ, or takes disciplinary
 312 action against any obligor subject to income withholding
 313 required by this section because of the existence of such
 314 withholding and the obligations or additional obligations

315 which it imposes on the source of income, shall be guilty
316 of a misdemeanor, and, upon conviction thereof, shall be
317 fined not less than five hundred dollars nor more than
318 one thousand dollars.

319 (q) In any case where immediate income withholding
320 is not required then, at any time following a period of
321 eighteen months during which the obligor has owed no
322 arrearages to the obligee or to the state of West Virginia
323 or any other state, if the obligee and obligor agree to
324 the termination of withholding and demonstrate to the
325 children's advocate that there is a reliable alternative
326 method by which to make the support payments, they
327 may request the children's advocate to terminate
328 withholding and such withholding from income may
329 cease until such time as further withholding is required
330 by law. The director of the child advocate office shall,
331 by legislative rule, establish state termination standards
332 which will ensure, at a minimum, that withholding will
333 not be terminated where there are indications that it is
334 unlikely that support will continue without such
335 withholding. The mere fact that all arrearages have
336 been paid shall not be a sufficient ground for the
337 termination of withholding.

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-5. Representation of parties.

1 (a) The children's advocate of the county where the
2 action under this section is brought shall litigate the
3 action in the best interests of the child although the
4 action is commenced in the name of a plaintiff listed in
5 section one of this article.

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

16 any blood or tissue tests ordered to be taken shall be
17 paid as part of the costs of the proceeding.

18 (c) The children's advocate shall litigate the action
19 only to the extent of establishing paternity and estab-
20 lishing and enforcing a child support order.

**§48A-6-6. Establishing paternity by acknowledgment of
natural father.**

1 (a) The natural father of a child may file an applica-
2 tion to establish paternity in circuit court when he
3 acknowledges that the child is his or when he has
4 married the mother of the child after the child's birth
5 and upon consent of the mother, or if she is deceased
6 or incompetent, or has surrendered custody, upon the
7 consent of the person or agency having custody of the
8 child or of a court having jurisdiction over the child's
9 custody. The application may be filed in the county
10 where the natural father resides, the child resides, or
11 the child was born. The circuit court, if satisfied that
12 the applicant is the natural father and that establish-
13 ment of the relationship is for the best interest of the
14 child, shall enter the finding of fact and an order upon
15 its docket, and thereafter the child is the child of the
16 applicant, as though born to him in lawful wedlock.

17 (b) A written acknowledgment by both the man and
18 woman that the man is the father of the named child
19 legally establishes the man as the father of the child for
20 all purposes and child support can be established under
21 the provisions of this chapter.

22 (c) On and after the first day of November, one
23 thousand nine hundred ninety, in addition to providing
24 the information necessary to establish paternity in
25 accordance with the provisions of this section, a person
26 whose name is to appear in the order establishing
27 paternity as a parent shall furnish to the clerk of the
28 circuit court the social security account number (or
29 numbers, if the parent has more than one such number)
30 issued to the parent. A record of the social security
31 number or numbers shall be forwarded to the state
32 registrar of vital statistics along with the order
33 establishing paternity.

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

§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, one of which copies shall be certified, and one
8 copy of this article to be sent to the responding court.
9 Certification shall be in accordance with the require-
10 ments of the initiating state. If the name and address
11 of the responding court is unknown and the responding
12 state has an information agency comparable to that
13 established in the initiating state it shall cause the
14 copies to be sent to the state information agency or other
15 proper official of the responding state, with a request
16 that the agency or official forward them to the proper
17 court and that the court of the responding state
18 acknowledge their receipt to the initiating court.

CHAPTER 57. EVIDENCE AND WITNESSES.

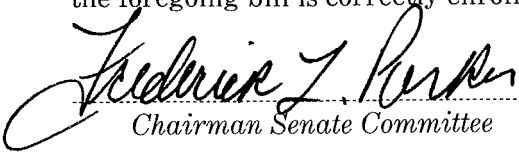
ARTICLE 5. MISCELLANEOUS PROVISIONS.

**§57-5-4. Production of writings—By person other than
party.**

1 When it appears by affidavit or otherwise that a
2 writing or document in the possession of any person not
3 a party to the matter in controversy is material and
4 proper to be produced before the court, or any person
5 appointed by it or acting under its process or authority,
6 or any such person as is named in section one of this
7 article, such court, family law master, judge or presi-
8 dent thereof may order the clerk of the said court to
9 issue a subpoena duces tecum to compel such production
10 at a time and place to be specified in the order.

67 [Enr. Com. Sub. for H. B. 4398

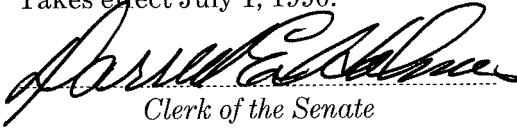
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

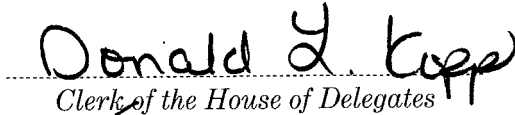

Chairman Senate Committee


Chairman House Committee

Originating in the House.

Takes effect July 1, 1990.

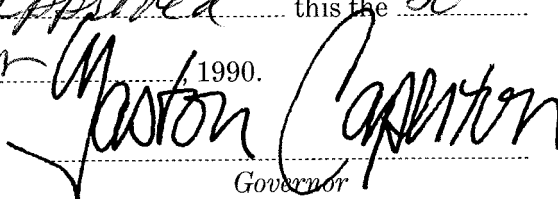

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 30th
day of March, 1990.


Governor

PRESENTED TO THE

GOVERNOR

Date

3/30/90

Time

3:55pm

RECEIVED

1990 MAR 30 PM 5:03

OFFICE OF THE GOVERNOR
SECRETARY OF STATE