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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



ENROLLED

Com Sub. For

HOUSE BILL No. *4389*

(By Delegates *Brown and Rowe*)



Passed *March 7* 1992

In Effect *Ninety Days From* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 4389

(By DELEGATES BROWN AND ROWE)

[Passed March 7, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact section four, article eight, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections thirteen and fifteen, article two, chapter forty-eight of said code; to amend and reenact sections one, two, three, three-a, four, five, six, seven, nine, ten and eleven, article two-a of said chapter forty-eight; to further amend said article two-a by adding thereto two new sections, designated sections twelve and thirteen; that article two-c of said chapter be amended and reenacted by adding thereto a new section, designated section fifteen; to amend and reenact section one, article four, chapter forty-eight-a of said code; to amend and reenact section three, article one, chapter forty-nine of said chapter; to amend and reenact section sixteen, article two, chapter forty-nine of said chapter; to amend and reenact sections one, two, three, five and eight, article six of said chapter; to further amend said article by adding thereto a new section, designated section eleven; to amend and reenact sections two, five and nine, article six-a of said chapter forty-nine; that article seven of said chapter be amended by adding thereto a new section, designated section twenty-eight; to amend article ten, chapter fifty-six of said

chapter by adding thereto a new section, designated section eight; to amend article two, chapter sixty-one of said code by adding thereto a new section, designated section nine-a; to amend and reenact section thirteen, article eight of said chapter; to amend article eight-b of said chapter by adding thereto a new section, designated section eleven-a; to amend article eight-d of said chapter by adding thereto a new section, designated section nine; to amend article eleven-a of said chapter sixty-one by adding thereto a new section, designated section eight; to amend and reenact sections seventeen-a and seventeen-c, article one-c, chapter sixty-two of said chapter; to amend and reenact section one, article eleven-a of said chapter; and to amend and reenact sections nine and seventeen, article twelve of said chapter, relating to the Family Protection Act of 1992; family violence training of peace officers approved by the West Virginia sheriffs' bureau; temporary relief during pendency of action for divorce, annulment or separate maintenance; relief upon ordering divorce or annulment or granting decree of separate maintenance; generally relating to the prevention of family violence, findings and purposes; definitions; jurisdiction, venue, effect of complaining party leaving residence, priority of petitions filed, who may file, and full faith and credit; divorce actions; commencement of proceedings, forms, counterclaims, accompanying persons, counties in which action may be brought, filing pleadings from other counties; temporary orders of court, hearings, persons present; protective orders; contempt; law-enforcement response to family violence; enforcement procedure for temporary and final protective orders; criminal penalties; arrest powers of law-enforcement officers responding to family violence; appeals; registration of order; confidentiality; judicial education on family violence; proceedings before a master; definitions relating to abuse and neglect; right to counsel, continuing legal education for attorneys, hearings, temporary custody; disposition of neglected or abused children; notice for placement changes, repeated placement reports to the courts; conviction for offenses against children; persons mandated to report suspected abuse and neglect; reporting procedures; directing child

protective services to investigate allegations of child abuse arising in child custody cases; priority of cases involving placement of children; expanding crimes against the person to include stalking; directing courts to make findings regarding abuse when the custodial parent is convicted of incest; conviction for offenses against children; victim notification of defendant's release; bail in situations of alleged child abuse; and prohibiting persons convicted of sexual abuse from residing with the child.

Be it enacted by the Legislature of West Virginia:

That section four, article eight, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections thirteen and fifteen, article two, chapter forty-eight of said code be amended and reenacted; that sections one, two, three, three-a, four, five, six, seven, nine, ten and eleven, article two-a of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections twelve and thirteen; that article two-c of said chapter be amended by adding thereto a new section, designated section fifteen; that section one, article four, chapter forty-eight-a of said code be amended and reenacted; that section three, article one, chapter forty-nine of said code be amended and reenacted; that section sixteen, article two of said chapter be amended and reenacted; that sections one, two, three, five and eight, article six of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eleven; that sections two, five and nine, article six-a of said chapter be amended and reenacted; that article seven of said chapter be amended by adding thereto a new section designated section twenty-eight; that article ten, chapter fifty-six of said code be amended by adding thereto a new section, designated section eight; that article two, chapter sixty-one of said code be amended by adding thereto a new section, designated section nine-a; that section thirteen, article eight of said chapter be amended and reenacted; that article eight-b of said chapter be amended by adding thereto a new section, designated section eleven-a; that article eight-d of said chapter be amended by adding thereto a new section, designated section nine; that

article eleven-a of said chapter be amended by adding thereto a new section, designated section eight; that sections seventeen-a and seventeen-c, article one-c, chapter sixty-two of said code be amended and reenacted; that section one, article eleven-a of said chapter be amended and reenacted; and that sections nine and seventeen, article twelve of said chapter be amended and reenacted, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 8. WEST VIRGINIA SHERIFFS' BUREAU.

§15-8-4. Training of peace officers approved by the bureau.

1 The bureau may contract or agree with any state
2 university or college in West Virginia or any other
3 organization for such university, college or other
4 organization to provide training for peace officers,
5 which training shall embrace police techniques in
6 detecting crime, apprehending criminals, securing and
7 preserving evidence and responding to calls involving
8 family violence. All law-enforcement officers selected by
9 the various law-enforcement agencies, if their selection
10 is approved by the bureau, shall receive such training
11 free with the exception of actual cost of housing and
12 meals.

13 The county commissions are authorized to pay the
14 necessary travel and living expenses of sheriffs and
15 deputies of their respective counties while receiving
16 training.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

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

1 (a) At the time of the filing of the complaint or at any
2 time after the commencement of an action for divorce,
3 annulment or separate maintenance under the provi-
4 sions of this article, and upon motion for temporary
5 relief, notice of hearing and hearing, the court may
6 order all or any portion of the following temporary

7 relief, which order shall govern the marital rights and
8 obligations of the parties during the pendency of the
9 action:

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

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

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

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

41 (5) As an incident to requiring the payment of
42 temporary alimony or temporary child support, the
43 court may order either party to continue in effect
44 existing policies of insurance covering the costs of health
45 care and hospitalization of the other party and the minor
46 children of the parties. If there is no such existing policy

47 or policies, the court shall order that such health care
48 insurance coverage be paid for by the noncustodial
49 parent, if the court determines that such health care
50 coverage is available to the noncustodial parent at a
51 reasonable cost. Payments made to an insurer pursuant
52 to this subdivision, either directly or by a deduction
53 from wages, shall be deemed to be temporary alimony
54 or temporary child support, in such proportion as the
55 court shall direct: *Provided*, That if the court does not
56 set forth in the order that a portion of such payments
57 is to be deemed temporary child support, then all such
58 payments made pursuant to this subdivision shall be
59 deemed to be temporary alimony.

60 (6) As an incident to requiring the payment of
61 temporary alimony or temporary child support, the
62 court may grant the exclusive use and occupancy of the
63 marital home to one of the parties during the pendency
64 of the action, together with all or a portion of the
65 household goods, furniture and furnishings, reasonably
66 necessary for such use and occupancy. The court may
67 require payments to third parties in the form of home
68 loan installments, land contract payments, rent, pay-
69 ments for utility services, property taxes, insurance
70 coverage or other expenses or charges reasonably
71 necessary for the use and occupancy of the marital
72 domicile. Payments made to a third party pursuant to
73 this subdivision shall be deemed to be temporary
74 alimony or temporary child support, in such proportion
75 as the court shall direct: *Provided*, That if the court does
76 not set forth in the order that a portion of such payments
77 is to be deemed temporary child support, then all such
78 payments made pursuant to this subdivision shall be
79 deemed to be temporary alimony: *Provided, however*,
80 That the court may order such payments to be made
81 without denominating them either as temporary alim-
82 ony or temporary child support, reserving such decision
83 until such time as the court determines the interests of
84 the parties in marital property and equitably divides the
85 same: *Provided further*, That at the time the court
86 determines the interests of the parties in marital
87 property and equitably divides the same, the court may
88 consider the extent to which payments made to third

89 parties under the provisions of this subdivision have
90 affected the rights of the parties in marital property,
91 and may treat such payments as a partial distribution
92 of marital property notwithstanding the fact that such
93 payments have been denominated temporary alimony or
94 temporary child support or not so denominated under
95 the provisions of this subdivision. Nothing contained in
96 this subdivision shall abrogate an existing contract
97 between either of the parties and a third party, or affect
98 the rights and liabilities of either party or a third party
99 under the terms of such contract.

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

127 (8) Where the pleadings include a specific request for
128 specific property or raise issues concerning the equita-
129 ble division of marital property, the court may enter

130 such order as is reasonably necessary to preserve the
131 estate of either or both of the parties, including the
132 imposition of a constructive trust, so that such property
133 be forthcoming to meet any order which may be made
134 in the action, and may compel either party to give
135 security to abide such order, or may require the
136 property in question to be delivered into the temporary
137 custody of a third party. The court may further order
138 either or both of the parties to pay the costs and
139 expenses of maintaining and preserving the property of
140 the parties during the pendency of the action: *Provided,*
141 That at the time the court determines the interests of
142 the parties in marital property and equitably divides the
143 same, the court may consider the extent to which
144 payments made for the maintenance and preservation of
145 property under the provisions of this subdivision have
146 affected the rights of the parties in marital property,
147 and may treat such payments as a partial distribution
148 of marital property. When appropriate, the court may
149 release all or any part of such protected property for
150 sale and substitute all or a portion of the proceeds of the
151 sale for such property.

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

161 (10) The court may enjoin either party from molesting
162 or interfering with the other, or otherwise imposing any
163 restraint on the personal liberty of the other, or
164 interfering with the custodial or visitation rights of the
165 other. Any order entered by the court to protect a party
166 from abuse may grant the relief provided in article two-
167 a of this chapter.

168 (b) In ordering temporary relief under the provisions
169 of this section, the court shall consider the financial
170 needs of the parties, the present employment income and

171 other recurring earnings of each party from any source,
172 their income-earning abilities, and the respective legal
173 obligations of each party to support himself or herself
174 and to support any other persons. Except in extraordi-
175 nary cases supported by specific findings set forth in the
176 order granting relief, payments of temporary alimony
177 and temporary child support are to be made from a
178 party's employment income and other recurring earn-
179 ings, and not from the corpus of a party's separate
180 estate, and an award of such relief shall not be
181 disproportionate to a party's ability to pay as disclosed
182 by the evidence before the court.

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

208 (d) To facilitate the resolution of issues arising at a
209 hearing for temporary relief, the court may, or upon the
210 motion of either party shall, order each of the parties
211 to file with the court, and serve on the other party, a

212 sworn statement of each party's assets, liabilities and
213 employment income and other earnings from any
214 source. The statement shall be in such form and contain
215 such detailed information as the court may prescribe by
216 general order. In addition, the court may, or upon the
217 motion of either party shall, order the parties to comply
218 with the disclosure requirements set forth in section
219 thirty-three of this article, and, if necessary, continue
220 the hearing for temporary relief from time to time to
221 afford the parties an opportunity to obtain and provide
222 such information.

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

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

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

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

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

247 And,

248 (2) The movant party or his or her attorney certifies
249 in writing the efforts, if any, which have been made to
250 give the notice, and the reasons supporting his claim

251 that notice should not be required.

252 (f) Every ex parte order granted without notice shall
253 be endorsed with the date and hour of issuance; shall
254 be filed forthwith in the circuit clerk's office and
255 entered of record; and shall set forth the finding of the
256 court that unless the order is granted without notice
257 there is probable cause to believe that existing condi-
258 tions will result in immediate and irreparable injury,
259 loss or damage to the movant party before the adverse
260 party or his or her attorney can be heard in opposition.
261 The order granting ex parte relief shall fix a time for
262 a hearing for temporary relief to be held within a
263 reasonable time, not to exceed twenty days, unless
264 before the time so fixed for hearing, such hearing is
265 continued for good cause shown or with the consent of
266 the party against whom the ex parte order is directed.
267 The reasons for the continuance shall be entered of
268 record. Within the time limits described herein, when
269 an ex parte order is made, a motion for temporary relief
270 shall be set down for hearing at the earliest possible
271 time and shall take precedence of all matters except
272 older matters of the same character. If the party who
273 obtained the ex parte order fails to proceed with a
274 motion for temporary relief, the court shall set aside the
275 ex parte order. At any time after ex parte relief is
276 granted, and on two days' notice to the party who
277 obtained such relief or on such shorter notice as the
278 court may direct, the adverse party may appear and
279 move the court to set aside or modify the ex parte order
280 on the grounds that the effects of such order are onerous
281 or otherwise improper. In such event, the court shall
282 proceed to hear and determine such motion as expedi-
283 tiously as the ends of justice require.

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

1 (a) Upon ordering a divorce or granting a decree of
2 separate maintenance, the court may require either
3 party to pay alimony in the form of periodic 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.

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

29 (3) As an incident to requiring the payment of alimony
30 or child support, the court may order either party to
31 continue in effect existing policies of insurance covering
32 the costs of health care and hospitalization of the other
33 party and the minor children of the parties: *Provided,*
34 That if the other party is no longer eligible to be covered
35 by such insurance because of the granting of an
36 annulment or divorce, the court may require a party to
37 substitute such insurance with a new policy to cover the
38 other party, or may consider the prospective cost of such
39 insurance in awarding alimony to be paid in periodic
40 installments. If there is no such existing policy or
41 policies, the court shall order such health care insurance
42 coverage to be paid for by the noncustodial parent, if
43 the court determines that such health care insurance
44 coverage is available to the noncustodial parent at a
45 reasonable cost. Payments made to an insurer pursuant
46 to this subdivision, either directly or by a deduction

47 from wages, shall be deemed to be alimony, child
48 support or installment payments for the distribution of
49 marital property, in such proportion as the court shall
50 direct: *Provided, however,* That if the court does not set
51 forth in the order that a portion of such payments is to
52 be deemed child support or installment payments for the
53 distribution of marital property, then all such payments
54 made pursuant to this subdivision shall be deemed to be
55 alimony: *Provided further,* That the designation of
56 insurance coverage as alimony under the provisions of
57 this subdivision shall not, in and of itself, give rise to
58 a subsequent modification of the order to provide for
59 alimony other than insurance for covering the costs of
60 health care and hospitalization.

61 (4) As an incident to requiring the payment of alimony
62 or child support, the court may grant the exclusive use
63 and occupancy of the marital home to one of the parties,
64 together with all or a portion of the household goods,
65 furniture and furnishings reasonably necessary for such
66 use and occupancy. Such use and occupancy shall be for
67 a definite period, ending at a specific time set forth in
68 the order, subject to modification upon the petition of
69 either party. Except in extraordinary cases supported
70 by specific findings set forth in the order granting
71 relief, a grant of the exclusive use and occupancy of the
72 marital home shall be limited to those situations where
73 such use and occupancy is reasonably necessary to
74 accommodate the rearing of minor children of the
75 parties. The court may require payments to third
76 parties in the form of home loan installments, land
77 contract payments, rent, payments for utility services,
78 property taxes, insurance coverage, or other expenses or
79 charges reasonably necessary for the use and occupancy
80 of the marital domicile. Payments made to a third party
81 pursuant to this subdivision for the benefit of the other
82 party shall be deemed to be alimony, child support or
83 installment payments for the distribution of marital
84 property, in such proportion as the court shall direct:
85 *Provided,* That if the court does not set forth in the order
86 that a portion of such payments is to be deemed child
87 support or installment payments for the distribution of
88 marital property, then all such payments made pursu-

89 ant to this subdivision shall be deemed to be alimony.
90 Nothing contained in this subdivision shall abrogate an
91 existing contract between either of the parties and a
92 third party, or affect the rights and liabilities of either
93 party or a third party under the terms of such contract.

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

108 (6) Where the pleadings include a specific request for
109 specific property or raise issues concerning the equita-
110 ble division of marital property as defined in section one
111 of this article, the court shall order such relief as may
112 be required to effect a just and equitable distribution
113 of the property and to protect the equitable interests of
114 the parties therein.

115 (7) Unless a contrary disposition be found appropriate
116 and ordered pursuant to other provisions of this section,
117 then upon the motion of either party, the court may
118 compel the other party to deliver to the movant party
119 any of his or her separate estate which may be in the
120 possession or control of the respondent party, and may
121 make such further order as is necessary to prevent
122 either party from interfering with the separate estate
123 of the other.

124 (8) The court shall, when allegations of abuse have
125 been proven, enjoin the offending party from molesting
126 or interfering with the other, or otherwise imposing any
127 restraint on the personal liberty of the other, or
128 interfering with the custodial or visitation rights of the

129 other. Such order may permanently enjoin the offending
130 party from entering the school, business or place of
131 employment of the other for the purpose of molesting or
132 harassing the other; or from contacting the other, in
133 person or by telephone, for the purpose of harassment
134 or threats; or from harassing or verbally abusing the
135 other in a public place.

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

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

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

156 (e) At any time after the entry of an order pursuant
157 to the provisions of this section, the court may, upon the
158 verified petition of either of the parties, revise or alter
159 such order concerning the maintenance of the parties,
160 or either of them, and make a new order concerning the
161 same, issuing it forthwith, as the altered circumstances
162 or needs of the parties may render necessary to meet the
163 ends of justice. The court may also from time to time
164 afterward, on the verified petition of either of the
165 parties, revise or alter such order to grant relief
166 pursuant to subdivision (8), subsection (b) of this section,
167 and make a new order concerning the same, issuing it
168 forthwith, as the circumstances of the parties and the

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

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

210 (g) In every case where a separation agreement is the
211 basis for an award of alimony, the court, in approving
212 the agreement, shall examine the agreement to ascer-
213 tain whether it clearly provides for alimony to continue
214 beyond the remarriage of the payee party or to cease in
215 such event. Where alimony is to be paid pursuant to the
216 terms of a separation agreement which does not state
217 whether the payment of alimony is to continue beyond
218 the remarriage of the payee party or is to cease, or
219 where the parties have not entered into a separation
220 agreement and alimony is to be awarded, the court shall
221 specifically state as a part of its order whether such
222 payments of alimony are to be continued beyond the
223 remarriage of the payee party or cease.

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

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

249 (1) To have committed adultery; or

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

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

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

ARTICLE 2A. PREVENTION OF FAMILY VIOLENCE.

§48-2A-1. Findings and purposes.

1 (a) The Legislature of this state finds that:

2 (1) Battered persons and other victims of family
3 violence have a right to be safe in their homes;

4 (2) Children are often physically assaulted or witness
5 violence against one of their parents and may suffer
6 deep and lasting emotional harm from victimization and
7 from exposure to family violence;

8 (3) Family violence is a major health and law-
9 enforcement problem in this state and one that affects
10 people of all racial and ethnic backgrounds and all
11 socioeconomic classes;

12 (4) Family violence can be deterred, prevented or
13 reduced by legal intervention;

14 (b) This article shall be liberally construed and
15 applied to promote the following purposes:

16 (1) To assure victims of family violence the maximum
17 protection from abuse that the law can provide;

18 (2) To create a speedy remedy to discourage violence
19 against family members with whom the abuser has
20 continuing contact;

21 (3) To expand the ability of law-enforcement officers
22 to assist victims, to enforce the family violence law
23 effectively, and to prevent further abuse;

24 (4) To facilitate equal enforcement of criminal law by
25 deterring and punishing violence against family
26 members; and

27 (5) To recognize that battering is a crime that will no
28 longer be excused or tolerated.

§48-2A-2. Definitions.

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

3 (a) “Family violence” or “abuse” means the occurrence
4 of one or more of the following acts between family or
5 household members who reside together or who for-
6 merly resided together:

7 (1) Attempting to cause or intentionally, knowingly or
8 recklessly causing physical harm to another with or
9 without dangerous or deadly weapons;

10 (2) Placing another in reasonable apprehension of
11 physical harm;

12 (3) Creating fear of physical harm by harassment,
13 psychological abuse or threatening acts;

14 (4) Causing or attempting to cause another to engage
15 involuntarily in any sexual act by force, threat of force,
16 or duress; and

17 (5) Holding, confining, detaining or abducting another
18 person against that person’s will.

19 (b) “Family or household member” means current or
20 former spouses, persons living as spouses, persons who
21 formerly resided as spouses, parents, children and
22 stepchildren, current or former sexual or intimate
23 partners, other persons related by blood or marriage,
24 persons who are presently or in the past have resided

25 or cohabited together, or who a person with whom the
26 victim has a child in common.

**§48-2A-3. Jurisdiction; venue; effect of petitioner's
leaving residence; priority of petitions filed
under this article; who may file; full faith
and credit; process.**

1 (a) *Jurisdiction.* — Circuit courts and magistrate
2 courts, as constituted under chapter fifty of this code,
3 shall have concurrent jurisdiction over proceedings
4 under this article.

5 (b) *Venue.* — The action may be heard in the county
6 in which the abuse occurred or in the county in which
7 the respondent is living. If the parties are married, the
8 action may also be brought in the county in which an
9 action for divorce between the parties may be brought
10 as provided by section eight, article two of this chapter.

11 (c) *Petitioner's rights.* — The petitioner's right to relief
12 under this article shall not be affected by his or her
13 leaving a residence or household to avoid further abuse.

14 (d) *Priority of petitions.* — Any petition filed under the
15 provisions of this article shall be given priority over any
16 other civil action before the court except actions in
17 which trial is in progress, and shall be docketed
18 immediately upon filing. Any appeal to the circuit court
19 of a magistrate's judgment on a petition for the relief
20 under this article shall be heard within ten working
21 days of the filing of the appeal.

22 (e) *Full faith and credit.* — Any temporary or final
23 protective order issued pursuant to this article shall be
24 effective throughout the state in every county. Any
25 protective order issued by the court of another state
26 shall be accorded full faith and credit and enforced as
27 if it were an order of this state if its terms and
28 conditions are substantially similar to those which may
29 be imposed by a court of this state.

30 (f) The final protective order may be served on the
31 respondent by means of a Class I legal advertisement
32 published notice, with the publication area being the
33 county in which the respondent resides, published in

34 accordance with the provisions of section two, article
35 three, chapter fifty-nine of this code if: (i) The petitioner
36 files an affidavit with the court stating that an attempt
37 at personal service pursuant to Rule four of the West
38 Virginia rules of civil procedure has been unsuccessful
39 or evidence is adduced at the hearing for the final
40 protective order that the respondent has left the state
41 of West Virginia; and (ii) a copy of the order is mailed
42 by certified or registered mail to the respondent at the
43 respondent's last known residence and returned un-
44 delivered.

§48-2A-3a. Divorce actions.

1 (a) During the pendency of a divorce action, a person
2 may file for and be granted relief provided by this
3 article, until an order is entered in the divorce action
4 pursuant to section thirteen, article two of this chapter.

5 (b) If a person who has been granted relief under this
6 article should subsequently become a party to an action
7 for divorce, separate maintenance or annulment, such
8 person shall remain entitled to the relief provided under
9 this article including the right to file for and obtain any
10 further relief, so long as no temporary or permanent
11 order has been entered in the action for divorce,
12 annulment and separate maintenance, pursuant to
13 section thirteen, article two of this chapter.

14 (c) No person who is a party to a pending action for
15 divorce, separate maintenance or annulment in which
16 an order has been entered pursuant to section thirteen,
17 article two of this chapter, shall be entitled to file for
18 or obtain relief under this article until after the entry
19 of a final order which grants or dismisses the action for
20 divorce, annulment or separate maintenance.

21 (d) Notwithstanding the provisions set forth in
22 subsection (b), section six of this article, any order issued
23 pursuant to this section where a subsequent action is
24 filed seeking a divorce, annulment or separate mainte-
25 nance, shall remain in full force and effect by operation
26 of this statute until a temporary or final order is issued
27 pursuant to section thirteen, article two of this chapter
28 or a final order granting or dismissing the action for

29 divorce, annulment or separate maintenance.

§48-2A-4. Commencement of proceeding; forms; counter-claim; accompanying persons; counties in which action may be brought; filing pleadings from other counties.

1 (a) No person shall be refused the right to file a
2 petition under the provisions of this article. No person
3 shall be denied relief under the provisions of this article
4 if she or he presents facts sufficient under the provisions
5 of this article for the relief sought.

6 A petition for a protective order may be filed by:

7 (1) A person seeking relief under this article for
8 herself or himself; or

9 (2) An adult family or household member for the
10 protection of the petitioner or for any family or
11 household member who is a minor child or physically
12 or mentally incapacitated to the extent that he or she
13 cannot file on their own behalf.

14 (b) The West Virginia supreme court of appeals shall
15 prescribe forms which are necessary and convenient for
16 proceedings pursuant to this article, and the court shall
17 distribute such forms to the clerk of the circuit court
18 and magistrate court of each county within the state.

19 (c) The respondent named in any petition alleging
20 abuse may file a counterclaim or raise any affirmative
21 defenses.

22 (d) No person accompanying a person who is seeking
23 to file a petition under the provisions of this article shall
24 be precluded from being present if his or her presence
25 is desired by the person seeking a petition unless the
26 person's behavior is disruptive to the proceeding.

27 (e) In the event a person who resides, temporarily or
28 permanently, in a county not described in subsection (b),
29 section three of this article desires to file a petition
30 described in subsection (a) of this section, such person
31 may obtain assistance in filing such a petition at a
32 magistrate court within the county of such place of
33 temporary or permanent residence. In such event, a

34 magistrate or the clerk of such magistrate court shall:

35 (1) Provide to such person such forms and such
36 assistance as may be necessary for the filing of a petition
37 described in subsection (a) of this section;

38 (2) To the extent possible, contact and obtain from any
39 magistrate court described in subsection (b), section
40 three of this article chosen by the person seeking to file
41 the petition a hearing date for such petition; and

42 (3) Forward such petition to the magistrate court
43 described in subdivision (2) of this subsection for filing
44 together with any such other papers and documents
45 necessary to file the same.

46 (f) No fees shall be charged for filing of petitions or
47 other papers, service of petitions or orders, copies of
48 orders, or other costs for services provided by, or
49 associated with, any proceedings under this article until
50 the matter is brought before the court for final
51 resolution.

§48-2A-5. Temporary orders of court; hearings; persons present.

1 (a) Upon filing of a verified petition under this article,
2 the court may enter such temporary orders as it may
3 deem necessary to protect the petitioner or minor
4 children from abuse, and, upon good cause shown, may
5 do so ex parte without the necessity of bond being given
6 by the petitioner. Clear and convincing evidence of
7 immediate and present danger of abuse to the petitioner
8 or minor children shall constitute good cause for
9 purposes of this section. If the respondent is not present
10 at the proceeding, the petitioner or the petitioner's legal
11 representative shall certify to the court, in writing, the
12 efforts which have been made to give notice to the
13 respondent or just cause why notice should not be
14 required. Copies of medical reports or records may be
15 admitted into evidence to the same extent as though the
16 original thereof. The custodian of such records shall not
17 be required to be present to authenticate such records
18 for any proceeding held pursuant to subsection (a).
19 Following such proceeding, the court shall order a copy

20 of the petition to be served immediately upon the
21 respondent, together with a copy of any temporary order
22 issued pursuant to the proceedings, notice setting forth
23 the time and place of the full hearing and a statement
24 of the right of the respondent to be present and to be
25 represented by counsel. Copies of any order made under
26 the provisions of this section shall also be issued to the
27 petitioner, and any law-enforcement agency having
28 jurisdiction to enforce the order, including the city
29 police, the county sheriff's office and local office of the
30 state police within twenty-four hours of the entry of the
31 order. Such initial protective order shall remain
32 effective until such time as a hearing is held. The order
33 shall be in full force and effect in every county in this
34 state.

35 (b) Within five days following the issuance of the
36 court's temporary order, a full hearing shall be held at
37 which the petitioner must prove the allegation of abuse
38 by a preponderance of the evidence, or such petition
39 shall be dismissed. Copies of medical reports may be
40 admitted into evidence to the same extent as though the
41 original thereof, upon proper authentication, by the
42 custodian of such records.

43 (c) No person requested by a party to be present
44 during a hearing held under the provisions of this
45 article shall be precluded from being present unless
46 such person is to be a witness in the proceeding and a
47 motion for sequestration has been made and such has
48 been granted or is found by the court to be disruptive.

49 (d) If a hearing is continued, the court may make or
50 extend such temporary orders as it deems necessary.

§48-2A-6. Protective orders.

1 (a) At the conclusion of the hearing and if the
2 petitioner has proven the allegations of abuse by a
3 preponderance of the evidence, then the court shall issue
4 a protective order which shall direct the respondent to
5 refrain from abusing the petitioner and/or the minor
6 children. The terms of a protective order may include:

7 (1) Granting possession to the petitioner of the

8 residence or household jointly resided in at the time the
9 abuse occurred;

10 (2) Awarding temporary custody of or establishing
11 temporary visitation rights with regard to minor
12 children;

13 (3) Establishing temporary visitation rights with
14 regard to the minor children and requiring third party
15 supervision of visitations if necessary to protect the
16 petitioner and/or the minor children;

17 (4) Ordering the noncustodial parent to pay to the
18 custodial parent a sum for temporary support and
19 maintenance of the petitioner and children, if any;

20 (5) Ordering the respondent to pay to the petitioner
21 a sum for temporary support and maintenance of the
22 petitioner, where appropriate;

23 (6) Ordering the respondent to refrain from entering
24 the school, business or place of employment of the
25 petitioner or household members or family members for
26 the purpose of violating the protective order;

27 (7) Directing the respondent to participate in
28 counseling;

29 (8) Ordering the respondent to refrain from contact-
30 ing, telephoning, communicating, harassing or verbally
31 abusing the petitioner in any public place.

32 (b) Any final protective order shall be for a fixed
33 period of time not to exceed sixty days: *Provided*, That
34 if a party has filed for divorce, separate maintenance or
35 annulment and no temporary or final divorce order is
36 entered prior to expiration of the protective order, upon
37 petitioner's motion, the protective order shall remain in
38 effect until such temporary or final divorce order is
39 entered. The court may amend its order at any time
40 upon subsequent petition filed by either party. If the
41 court enters an initial order for a period of less than
42 sixty days, it shall, after notice and hearing, extend its
43 initial order for the full sixty day period if it finds the
44 petitioner or the minor child or children continue to
45 need protection from abuse. The order shall be in full

46 force and effect in every county in this state. The order
47 shall state that it is in full force and effect in every
48 county in this state.

49 (c) No order under this article shall in any manner
50 affect title to any real property.

51 (d) Certified copies of any order made under the
52 provisions of this section shall be issued to the petitioner,
53 the respondent and any law-enforcement agency having
54 jurisdiction to enforce the order, including the city
55 police, the county sheriff's office or local office of the
56 division of public safety within twenty-four hours of the
57 entry of the order.

58 (d) No mutual protective orders shall be granted
59 unless both parties have filed a petition under section
60 four of this article and have proven the allegations of
61 abuse by a preponderance of the evidence.

§48-2A-7. Contempt.

1 (a) Upon violation of any order issued pursuant to this
2 article, the court shall, upon the filing of a petition for
3 contempt by the petitioner, issue an order to show cause
4 why the respondent should not be held in contempt of
5 court and set a time for a hearing thereon within five
6 days of the filing of said motion.

7 (b) Notwithstanding any other provision of law to the
8 contrary, any sentence for contempt hereunder may
9 include imprisonment up to thirty days and a fine not
10 to exceed one thousand dollars or both. In lieu of
11 confinement, the court may allow the contemnor to post
12 bond as surety for the faithful compliance with the
13 orders of the court.

§48-2A-9. Law enforcement response to family violence.

1 (a) Notwithstanding any other provision of this code
2 to the contrary, all law-enforcement officers are hereby
3 authorized to serve all pleadings and orders filed or
4 entered pursuant to this article on Sundays and legal
5 holidays. No law-enforcement officer shall refuse to
6 serve any pleadings or orders entered pursuant to this
7 article.

8 (b) Any law-enforcement officer responding to an
9 alleged incident of family violence shall inform the
10 parties thereto of the availability of the possible
11 remedies provided by this article and the possible
12 applicability of the criminal laws of this state. Any law-
13 enforcement officer investigating an alleged incident of
14 family violence shall advise the person subject to abuse
15 of the availability of the family protection shelter to
16 which such person may be admitted.

17 (c) Any law-enforcement officer responding to an
18 alleged incident of abuse shall, in addition to providing
19 the information required in subsection (a) of this section,
20 provide transportation for or facilitate transportation of
21 the victim or victims, upon the request of such victim
22 or victims, to a shelter or the appropriate court where
23 there is reasonable cause to believe that such victim or
24 victims have suffered or are likely to suffer physical
25 injury.

26 (d) Each law-enforcement agency shall maintain
27 records on all incidents of family or household abuse
28 reported to it, and shall monthly make and deliver to
29 the department of public safety a report on a form
30 prescribed by the department, listing all such incidents
31 of family or household abuse. Such reports shall include:

32 (1) The age and sex of the abused and abusing parties;

33 (2) The relationship between the parties;

34 (3) The type and extent of abuse;

35 (4) The number and type of weapons involved;

36 (5) Whether the law-enforcement agency responded to
37 the complaint and if so, the time involved, the action
38 taken and the time lapse between the agency's action
39 and the abused's request for assistance;

40 (6) Whether the petitioner reported having filed
41 complaints with regard to family or household abuse on
42 any prior occasion and if so, the number of such prior
43 complaints; and

44 (7) The effective dates and terms of any protective
45 order issued prior to or following the incident to protect

46 the abused party: *Provided*, That no information which
47 will permit the identification of the parties involved in
48 any incident of abuse shall be included in such report.

49 (e) The department of public safety shall tabulate and
50 analyze any statistical data derived from the reports
51 made by law-enforcement agencies pursuant to this
52 section, and publish a statistical compilation in the
53 department's annual uniform crime report, as provided
54 for in section twenty-four, article two, chapter fifteen of
55 this code. The statistical compilation shall include, but
56 is not limited to, the following:

57 (1) The number of family violence complaints
58 received;

59 (2) The number of complaints investigated;

60 (3) The number of complaints received from alleged
61 victims of each sex;

62 (4) The average time lapse in responding to such
63 complaints;

64 (5) The number of complaints received from alleged
65 victims who have filed such complaints on prior
66 occasions;

67 (6) The number of aggravated assaults and homicides
68 resulting from such repeat incidents;

69 (7) The type of police action taken in disposition of the
70 cases; and

71 (8) The number of alleged violations of protective
72 orders.

73 (f) As used in this section, the terms "abuse," "family
74 violence" and "family or household members" shall have
75 the meanings given them in section two of this article;
76 and the term "law-enforcement agency" shall include
77 the West Virginia department of health and human
78 resources in those instances of child abuse reported to
79 the department which are not otherwise reported to any
80 other law-enforcement agency.

81 (g) The governor's committee on crime, delinquency
82 and correction shall develop and promulgate rules for

83 state, county and municipal law-enforcement officers
84 and law-enforcement agencies regarding the duties of
85 law-enforcement officers and law-enforcement agencies
86 with respect to domestic violence. The notice of the
87 public hearing on the rules shall be published before the
88 first day of July, one thousand nine hundred ninety-one.
89 Prior to the publication of the proposed rules, the
90 governor's committee on crime, delinquency and correc-
91 tion shall convene a meeting or meetings of an advisory
92 committee to assist in the development of the rules. The
93 advisory committee shall be composed of persons invited
94 by the committee to represent state, county and local
95 law-enforcement agencies and officers, to represent
96 magistrates and court officials, to represent victims of
97 domestic violence, to represent shelters receiving
98 funding pursuant to article two-c of this chapter, and
99 to represent other persons or organizations who, in the
100 discretion of the committee, have an interest in the
101 rules. The rules and the revisions thereof as provided in
102 this section shall be promulgated as legislative rules in
103 accordance with chapter twenty-nine-a of this code.
104 Following the promulgation of said rules, the committee
105 shall meet at least annually to review the rules and to
106 propose revisions as a result of changes in law or policy.

107 (h) Nothing in this section shall be construed to
108 authorize the inclusion of information contained in a
109 report of an incident of abuse in any local, state,
110 interstate, national or international systems of criminal
111 identification pursuant to section twenty-four, article
112 two, chapter fifteen of this code: *Provided*, That nothing
113 in this section shall prohibit the department of public
114 safety from processing information through its criminal
115 identification bureau with respect to any actual charge
116 or conviction of a crime.

117 (i) All law-enforcement officers shall receive training
118 relating to response to calls involving family violence by
119 the first day of October, one thousand nine hundred
120 ninety-three.

**§48-2A-10. Enforcement procedure for temporary and
final protective orders.**

1 (a) Upon issuance of a temporary order as provided
2 in section five of this article, and service thereof upon
3 the respondent, or under relief granted in a protective
4 order as provided in subsections (a) and (b), section six
5 of this article of which the respondent has notice, a copy
6 of such order shall, no later than the close of the next
7 business day, be delivered by the court or the clerk to
8 a local office of the city police, the county sheriff and
9 the West Virginia department of public safety, where
10 it shall be placed in a confidential file, with access
11 provided only to the law-enforcement agency and the
12 respondent named on said order: *Provided*, That upon
13 the expiration of any order issued pursuant to section
14 five or six of this article, any such law-enforcement
15 agency which has any such order on file, shall imme-
16 diately expunge its confidential file of any reference
17 thereto and destroy all copies of such order in its
18 possession, custody or control. A sworn affidavit may be
19 executed by the party awarded exclusive possession of
20 the residence or household, pursuant to an order entered
21 under subsection (b), section six of this article, and
22 delivered to such law-enforcement agency simultane-
23 ously with any such order, giving his or her consent for
24 a law-enforcement officer to enter such residence or
25 household, without a warrant, to enforce such protective
26 order or temporary order. Orders shall be promptly
27 served upon the respondent. Failure to serve shall not
28 stay the effect of a valid order if the respondent has
29 actual notice of the existence and contents of the order.

30 (b) Any person who observes a violation of such order
31 or the violated party may call a local law-enforcement
32 agency, which shall verify the existence of a current
33 order, and shall direct a law-enforcement officer to
34 promptly investigate the alleged violation.

35 (c) Where a law-enforcement officer observes a
36 violation of a valid order, he or she may immediately
37 arrest the subject of the order. In cases of violation of
38 such orders occurring outside the presence of the
39 investigating officer, the petitioner may apply to a court
40 in session in the county in which the violation occurred
41 or the county in which the order was issued for a

42 warrant of arrest. If the court finds probable cause to
43 believe that a valid order has been violated, the court
44 shall issue such warrant for the arrest of the subject of
45 the order wherever he or she may be found.

46 (d) Where there is an arrest, the officer shall take the
47 arrested person before a court or a magistrate and upon
48 a finding of probable cause to believe a violation of an
49 order has taken place, the court or magistrate shall set
50 a time and place for a hearing, to take place within five
51 days, and serve forthwith upon the alleged violator an
52 order to show cause why he or she should not be held
53 in contempt for violation of the prior order, which unless
54 waived by the defendant shall be by trial by a jury of
55 six persons. The remedies provided by this section shall
56 be limited to violations of a temporary order or
57 protective order entered pursuant to subsection (a) or
58 (b), section six of this article. A respondent who shall
59 abuse the petitioner and/or minor children in knowing
60 and willful violation of the terms of a temporary or final
61 protective order issued under the provisions of this
62 article shall be guilty of a misdemeanor, and, upon
63 conviction thereof, shall be confined in the county jail
64 for a period of not less than one day nor more than one
65 year, which jail term shall include actual confinement
66 of not less than twenty-four hours, and shall be fined not
67 less than two hundred fifty dollars nor more than two
68 thousand dollars.

§48-2A-11. Appeals.

1 Any party to a temporary or final protective order
2 may as a matter of right present a petition for appeal,
3 within five days of entry of the order in magistrate
4 court, to the circuit court. The order shall remain in
5 effect pending an appeal unless stayed by the circuit
6 court. No bond shall be required for any appeal under
7 this section. In any case where a petition for appeal is
8 filed under this section, the petition shall be heard de
9 novo by the circuit court within ten days from the filing
10 of the petition for appeal.

§48-2A-12. Registration of order.

1 (a) The department of public safety shall maintain a

2 registry in which it shall enter certified copies of orders
3 entered by courts from other counties in this state
4 pursuant to the provisions of this article, or from other
5 states pursuant to their laws: *Provided*, That provisions
6 of this section shall not become effective until such time
7 as a central automated record system is developed.

8 (b) A petitioner who obtains a protective order under
9 this article, or from another state pursuant to its law,
10 may register that order in any county within this state
11 where the petitioner believes enforcement may be
12 necessary.

13 (c) A protective order may be registered by the
14 petitioner in a county other than the issuing county by
15 obtaining a certified copy of the order of the issuing
16 court certified by the clerk of that court and presenting
17 that certified order to the local office of the state police
18 where the order is to be registered.

19 (d) Upon receipt of a certified order for registration,
20 the local office of the state police shall provide certified
21 copies to any law enforcement agency within its
22 jurisdiction, including the city police, and the county
23 sheriff's office.

24 (e) Nothing in this section shall preclude the enforce-
25 ment of an order in a county other than the county in
26 which the order was issued if the petitioner has not
27 registered the order in the county in which the alleged
28 violation of the order occurred.

§48-2A-13. Judicial education on family violence.

1 All judges may and, magistrates and family law
2 masters shall receive a minimum of three hours of
3 training by the first day of October, one thousand nine
4 hundred ninety-three, and three hours per year each
5 year thereafter on family violence which shall include
6 training on the psychology of family violence, the
7 battered wife and child syndromes, sexual abuse,
8 courtroom treatment of victims, offenders and wit-
9 nesses, available sanctions and treatment standards for
10 offenders, and available shelter and support services for
11 victims. The supreme court of appeals may provide such

12 training in conjunction with other judicial education
13 programs offered by the supreme court.

ARTICLE 2C. FAMILY PROTECTION SHELTER SUPPORT ACT.

§48-2C-15. Confidentiality.

1 (a) No program or shelter receiving funds pursuant
2 to this article shall disclose or be compelled to disclose,
3 release or be compelled to release any written records
4 created or maintained in providing services pursuant to
5 this article except:

6 (1) Upon written consent of the person seeking or who
7 has sought services from the program or the shelter;

8 (2) In any proceeding brought under sections four and
9 five, article six, chapter nine of this code or section one,
10 article six, chapter forty-nine of this code, et seq.;

11 (3) Pursuant to an order of any court based upon a
12 finding that said information is sufficiently relevant to
13 a proceeding before the court to outweigh the impor-
14 tance to maintain the confidentiality established by this
15 section;

16 (4) To protect against a clear and substantial danger
17 of imminent injury by a client to him or herself or
18 another;

19 (5) For treatment or internal review purposes to the
20 staff of any mental health facility if the client is also
21 being cared for by other health professionals in the
22 treatment of the client.

23 (6) No consent or authorization for the transmission
24 or disclosure of confidential information shall be
25 effective unless it is in writing and signed by the client.
26 Every person signing an authorization shall be given a
27 copy.

**CHAPTER 48A. ENFORCEMENT OF
FAMILY OBLIGATIONS.**

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

**§48A-4-1. Appointment of family law masters; term of
office; vacancy; qualifications; removal;**

compensation and expenses; budget; location 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 division 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 division 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 Each county commission of this state shall enter into
62 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 sixteen
75 thousand five hundred dollars and shall be appointed by
76 the family law master and serve at his or her will and
77 pleasure. Disbursement of salaries shall be made by or

78 pursuant to the order of the director of the administra-
79 tive office of the 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 refer
128 to the master the following matters for hearing to be
129 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, spousal support or
147 family violence, wherein either party has requested such
148 referral or the court on its own motion in individual

149 cases or by general order has referred such motions to
150 the master: *Provided*, That if the circuit court deter-
151 mines, in its discretion, that the pleadings raise
152 substantial issues concerning the identification of
153 separate property or the division of marital property
154 which may have a bearing on an award of support, the
155 court may decline to refer a motion for support pendente
156 lite to the family law 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 of 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; and

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

188 time the action is filed, and no advance payment shall
189 be required for additional fees beyond the initial fees
190 required by this section. Any payment of fees for a
191 hearing shall be refunded by the clerk of the circuit
192 court if the master verifies that such hearing was not
193 held, upon the request of the person paying such fees.

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

202 (1) For an action to establish an order of support, fifty
203 dollars;

204 (2) For an action to establish paternity, one hundred
205 dollars;

206 (3) For a motion for pendente lite relief affecting
207 custody, visitation, child support or spousal support,
208 fifty dollars;

209 (4) For a petition for modification of an order
210 involving child custody, child visitation, child support or
211 spousal support, fifty dollars: *Provided*, That if the
212 matter is contested, the fee shall be fifty dollars for the
213 first hour or any portion thereof, and thirty dollars per
214 hour for each subsequent hour or any portion thereof;

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

216 (6) For a proceeding for the enforcement of an order,
217 fifty dollars: *Provided*, That if the matter is contested,
218 the fee shall be fifty dollars for the first hour or any
219 portion thereof, and thirty dollars per hour for each
220 subsequent hour or any portion thereof; and

221 (7) For a contested divorce action matured for final
222 hearing, fifty dollars for the first hour or any portion
223 thereof, and thirty dollars per hour for each subsequent
224 hour or any portion thereof.

225 (1) Persons entitled to notice of a master's hearing

226 shall be timely informed of:

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

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

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

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

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

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. PURPOSES; DEFINITIONS.

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

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

3 (1) A parent, guardian or custodian who knowingly or
4 intentionally inflicts, attempts to inflict, or knowingly

5 allows another person to inflict, physical injury, or
6 mental or emotional injury, upon the child or another
7 child in the home; or

8 (2) Sexual abuse or sexual exploitation; or

9 (3) The sale or attempted sale of a child by a parent,
10 guardian, or custodian in violation of section sixteen,
11 article four, chapter forty-eight of this code.

12 In addition to its broader meaning, physical injury
13 may include an injury to the child as a result of
14 excessive corporal punishment.

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

20 (c) "Child abuse and neglect" or "child abuse or
21 neglect" means physical injury, mental or emotional
22 injury, sexual abuse, sexual exploitation, sale or
23 attempted sale, or negligent treatment or maltreatment
24 of a child by a parent, guardian, or custodian who is
25 responsible for the child's welfare, under circumstances
26 which harm or threaten the health and welfare of the
27 child.

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

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

32 (2) Identifying, preventing and remedying conditions
33 which cause child abuse and neglect;

34 (3) Preventing the unnecessary removal of children
35 from their families by identifying family problems and
36 assisting families in resolving problems which could
37 lead to a removal of children and a breakup of the
38 family;

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

42 (5) Placing children in suitable adoptive homes when
43 restoring the children to their families is not possible or
44 appropriate; and

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

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

56 (1) Nonaccidental trauma inflicted by a parent,
57 guardian, custodian, sibling or a babysitter or other
58 caretaker; or

59 (2) A combination of physical and other signs indicat-
60 ing a pattern of abuse which may be medically diag-
61 nosed as battered child syndrome; or

62 (3) Nutritional deprivation; or

63 (4) Abandonment by the parent, guardian or custo-
64 dian; or

65 (5) Inadequate treatment of serious illness or disease;
66 or

67 (6) Substantial emotional injury inflicted by a parent,
68 guardian or custodian; or

69 (7) Sale or attempted sale of the child by the parent,
70 guardian, or custodian.

71 (f) "Multidisciplinary team" means a group of profes-
72 sionals and paraprofessionals representing a variety of
73 disciplines who interact and coordinate their efforts to
74 identify, diagnose and treat specific cases of child abuse
75 and neglect. Multidisciplinary teams may include, but
76 are not limited to, medical, child care, and law-
77 enforcement personnel, social workers, psychologists,
78 and psychiatrists. Their goal is to pool their respective

79 skills in order to formulate accurate diagnoses and to
80 provide comprehensive coordinated treatment with
81 continuity and follow-up for both parents and children.
82 “Community team” means a multidisciplinary group
83 which addresses the general problem of child abuse and
84 neglect in a given community, and may consist of
85 several multidisciplinary teams with different functions.

86 (g) (1) “Neglected child” means a child:

87 (A) Whose physical or mental health is harmed or
88 threatened by a present refusal, failure or inability of
89 the child’s parent, guardian or custodian to supply the
90 child with necessary food, clothing, shelter, supervision,
91 medical care or education, when such refusal, failure or
92 inability is not due primarily to a lack of financial
93 means on the part of the parent, guardian or custodian;

94 (B) Who is presently without necessary food, clothing,
95 shelter, medical care, education or supervision because
96 of the disappearance or absence of the child’s parent or
97 custodian; or

98 (2) “Neglected child” does not mean a child whose
99 education is conducted within the provisions of section
100 one, article eight, chapter eighteen of this code.

101 (h) “Parenting skills” means a parent’s competencies
102 in providing physical care, protection, supervision and
103 psychological support appropriate to a child’s age and
104 state of development.

105 (i) “Sexual abuse” means:

106 (A) As to a child who is less than sixteen years of age,
107 any of the following acts which a parent, guardian or
108 custodian shall engage in, attempt to engage in, or
109 knowingly procure another person to engage in, with
110 such child, notwithstanding the fact that the child may
111 have willingly participated in such conduct or the fact
112 that the child may have suffered no apparent physical
113 injury or mental or emotional injury as a result of such
114 conduct:

115 (i) Sexual intercourse; or

116 (ii) Sexual intrusion; or

117 (iii) Sexual contact; or

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

126 (i) Sexual intercourse; or

127 (ii) Sexual intrusion; or

128 (iii) Sexual contact; or

129 (C) Any conduct whereby a parent, guardian or
130 custodian displays his or her sex organs to a child, or
131 procures another person to display his or her sex organs
132 to a child, for the purpose of gratifying the sexual desire
133 of the parent, guardian or custodian, of the person
134 making such display, or of the child, or for the purpose
135 of affronting or alarming the child.

136 (j) "Sexual contact" means sexual contact as that term
137 is defined in section one, article eight-b, chapter sixty-
138 one of this code.

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

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

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

153 (l) "Sexual intercourse" means sexual intercourse as

154 that term is defined in section one, article eight-b,
155 chapter sixty-one of this code.

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

159 (n) "Parental rights" means any and all rights and
160 duties regarding a parent to a minor child, including,
161 but not limited to, custodial rights and visitational
162 rights and rights to participate in the decisions affecting
163 a minor child.

164 (o) "Placement" means any temporary or permanent
165 placement of a child who is in the custody of the state
166 in any foster home, group home, or other facility or
167 residence.

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

§49-2-16. State responsibility for child care.

1 The state department is hereby authorized and
2 empowered to provide care, support and protective
3 services for children who are handicapped by depen-
4 dency, neglect, single parent status, mental or physical
5 disability, or who for other reasons are in need of public
6 service. Such department is also hereby authorized and
7 empowered in its discretion to accept children for care
8 from their parent or parents, guardian, custodian or
9 relatives and to accept the custody of children commit-
10 ted to its care by courts exercising juvenile jurisdiction.
11 The department of human services or any county office
12 of such department is also hereby authorized and
13 empowered in its discretion to accept temporary custody
14 of children for care from any law-enforcement officer in
15 an emergency situation.

16 The department of human services shall provide care
17 in special boarding homes for children needing deten-
18 tion pending disposition by a court having juvenile
19 jurisdiction or temporary care following such court
20 action.

21 Within ninety days of the date of the signatures to a
22 voluntary placement agreement, after receipt of phys-

23 ical custody, the state department shall file with the
24 court a petition for review of the placement, stating the
25 child's situation and the circumstance that gives rise to
26 the voluntary placement. If the department intends to
27 extend the voluntary placement agreement, the depart-
28 ment shall file with the court a copy of the child's case
29 plan. The court shall appoint an attorney for the child,
30 who shall also receive a copy of the case plan. The court
31 shall schedule a hearing and shall give notice of the time
32 and place and right to be present at such hearing to:
33 The child's attorney; the child, if twelve years of age or
34 older; the child's parents or guardians; the child's foster
35 parents; and any other such persons as the court may
36 in its discretion direct. The child's presence at such
37 hearing may be waived by the child's attorney at the
38 request of the child or if the child would suffer
39 emotional harm. At the conclusion of the proceedings,
40 but no later than ninety days after the date of the
41 signatures to the voluntary placement agreement, the
42 court shall enter an order determining whether or not
43 continuation of the voluntary placement is in the best
44 interests of the child; specifying under what conditions
45 the child's placement shall continue; and specifying
46 whether or not the department has made reasonable
47 efforts to reunify the family and/or provide a plan for
48 the permanent placement of the child.

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

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

1 (a) If the state department or a reputable person
2 believes that a child is neglected or abused, the
3 department or the person may present a petition setting
4 forth the facts to the circuit court in the county in which
5 the child resides, or to the judge of such court in
6 vacation. The petition shall be verified by the oath of
7 some credible person having knowledge of the facts. The
8 petition shall allege specific conduct including time and
9 place, how such conduct comes within the statutory
10 definition of neglect or abuse with references thereto,
11 any supportive services provided by the state depart-

12 ment to remedy the alleged circumstances and the relief
 13 sought. Upon filing of the petition, the court shall set
 14 a time and place for a hearing and shall appoint counsel
 15 for the child. When there is an order for temporary
 16 custody pursuant to section three of this article, such
 17 hearing shall be held within thirty days of such order,
 18 unless a continuance for a reasonable time is granted to
 19 a date certain, for good cause shown.

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

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

**§49-6-2. Petition to court when child believed neglected
 or abused — Right to counsel; improvement
 period; hearing; priority of proceeding;
 transcript.**

1 (a) In any proceeding under the provisions of this

2 article, the child, his parents, his custodian or other
3 persons standing in loco parentis to him, such persons
4 other than the child being hereinafter referred to as
5 other party or parties, shall have the right to be
6 represented by counsel at every stage of the proceedings
7 and shall be informed by the court of their right to be
8 so represented and that if they cannot pay for the
9 services of counsel, that counsel will be appointed. If the
10 other parties have not retained counsel and the other
11 parties cannot pay for the services of counsel, the court
12 shall, by order entered of record, at least ten days prior
13 to the date set for hearing, appoint an attorney or
14 attorneys to represent the other party or parties and so
15 inform the parties. Under no circumstances may the
16 same attorney represent both the child and the other
17 party or parties, nor shall the same attorney represent
18 both parents or custodians. However, one attorney may
19 represent both parents or custodians where both parents
20 or guardians consent to this representation after the
21 attorney fully discloses to the client the possible conflict,
22 and where the attorney assures the court that she or he
23 is able to represent each client without impairing her
24 or his professional judgment; however, if more than one
25 child from a family is involved in the proceeding, one
26 attorney may represent all the children. The court may
27 allow to each attorney so appointed a fee in the same
28 amount which appointed counsel can receive in felony
29 cases. Any attorney appointed pursuant to this section
30 shall by the first day of July, one thousand nine hundred
31 ninety-three, and three hours per year each year
32 thereafter, receive a minimum of three hours of
33 continuing legal education training on representation of
34 children, child abuse and neglect: *Provided*, That where
35 no attorney who has completed this training is available
36 for such appointment, the court shall appoint a compe-
37 tent attorney with demonstrated knowledge of child
38 welfare law to represent the child. Any attorney
39 appointed pursuant to this section shall perform all
40 duties required as an attorney licensed to practice law
41 in the state of West Virginia.

42 (b) In any proceeding under this article, any parent
43 or custodian may, prior to final hearing, move to be

44 allowed an improvement period of three to twelve
45 months in order to remedy the circumstances or alleged
46 circumstances upon which the proceeding is based. The
47 court shall allow one such improvement period unless it
48 finds compelling circumstances to justify a denial
49 thereof, but may require temporary custody with a
50 responsible relative, which may include any parent,
51 guardian, or other custodian, or the state department or
52 other agency during the improvement period. An order
53 granting such improvement period shall require the
54 department to prepare and submit to the court a family
55 case plan in accordance with the provisions of section
56 three, article six-d of this chapter.

57 (c) In any proceeding under this article, the party or
58 parties having custodial or other parental rights or
59 responsibilities to the child shall be afforded a meaning-
60 ful opportunity to be heard, including the opportunity
61 to testify and to present and cross-examine witnesses.
62 The petition shall not be taken as confessed. A transcript
63 or recording shall be made of all proceedings unless
64 waived by all parties to the proceeding. The rules of
65 evidence shall apply. Where relevant, the court shall
66 consider the efforts of the state department to remedy
67 the alleged circumstances. At the conclusion of the
68 hearing the court shall make a determination based
69 upon the evidence and shall make findings of fact and
70 conclusions of law as to whether such child is abused or
71 neglected, which shall be incorporated into the order of
72 the court. The findings must be based upon conditions
73 existing at the time of the filing of the petition and
74 proven by clear and convincing proof.

75 (d) Any petition filed and any proceeding held under
76 the provisions of this article shall, to the extent
77 practicable, be given priority over any other civil action
78 before the court, except proceedings under article two-
79 a, chapter forty-eight of this code and actions in which
80 trial is in progress. Any petition filed under the
81 provisions of this article shall be docketed immediately
82 upon filing. Any hearing to be held at the end of an
83 improvement period and any other hearing to be held
84 during any proceedings under the provisions of this

85 article shall be held as nearly as practicable on
86 successive days and, with respect to said hearing to be
87 held at the end of an improvement period, shall be held
88 as close in time as possible after the end of said
89 improvement period.

90 (e) Following the court's determination, it shall be
91 inquired of the parents or custodians whether or not
92 appeal is desired and the response transcribed. A
93 negative response shall not be construed as a waiver.
94 The evidence shall be transcribed and made available
95 to the parties or their counsel as soon as practicable, if
96 the same is required for purposes of further proceed-
97 ings. If an indigent person intends to pursue further
98 proceedings, the court reporter shall furnish a trans-
99 cript of the hearing without cost to the indigent person
100 if an affidavit is filed stating that he cannot pay
101 therefor.

**§49-6-3. Petition to court when child believed neglected
or abused — Temporary custody.**

1 (a) Upon the filing of a petition, the court may order
2 that the child alleged to be an abused or neglected child
3 be delivered for not more than ten days into the custody
4 of the state department or a responsible relative, which
5 may include any parent, guardian, or other custodian
6 pending a preliminary hearing, if it finds that: (1) There
7 exists imminent danger to the physical well-being of the
8 child, and (2) there are no reasonably available alterna-
9 tives to removal of the child, including, but not limited
10 to, the provision of medical, psychiatric, psychological or
11 homemaking services in the child's present custody:
12 *Provided,* That where the alleged abusing person, if
13 known, is a member of a household, the court shall not
14 allow placement pursuant to this section of the child or
15 children in said home unless the alleged abusing person
16 is or has been precluded from visiting or residing in said
17 home by judicial order. In a case where there is more
18 than one child in the home, or in the temporary care,
19 custody, or control of the alleged offending parent, the
20 petition shall so state, and notwithstanding the fact that
21 the allegations of abuse or neglect may pertain to less
22 than all of such children, each child in the home for

23 whom relief is sought shall be made a party to the
24 proceeding. Even though the acts of abuse or neglect
25 alleged in the petition were not directed against a
26 specific child who is named in the petition, the court
27 shall order the removal of such child, pending final
28 disposition, if it finds that there exists imminent danger
29 to the physical well-being of the child and a lack of
30 reasonable available alternatives to removal. The initial
31 order directing such custody shall contain an order
32 appointing counsel and scheduling the preliminary
33 hearing, and upon its service shall require the im-
34 mediate transfer of custody of such child or children to the
35 state department or a responsible relative which may
36 include any parent, guardian, or other custodian. The
37 court order shall state: (1) That continuation in the home
38 is contrary to the best interests of the child and why;
39 and (2) whether or not the state department made a
40 reasonable effort to prevent the placement or that the
41 emergency situation made such efforts unreasonable or
42 impossible. The order may also direct any party or the
43 department to initiate or become involved in services to
44 facilitate reunification of the family.

45 (b) Whether or not the court orders immediate
46 transfer of custody as provided in subsection (a) of this
47 section, if the facts alleged in the petition demonstrate
48 to the court that there exists imminent danger to the
49 child, the court may schedule a preliminary hearing
50 giving the respondents at least five days' actual notice.
51 If the court finds at the preliminary hearing that there
52 are no alternatives less drastic than removal of the child
53 and that a hearing on the petition cannot be scheduled
54 in the interim period, the court may order that the child
55 be delivered into the temporary custody of the state
56 department or a responsible relative, which may include
57 any parent, guardian, or other custodian, or another
58 appropriate person or agency for a period not exceeding
59 sixty days: *Provided*, That the court order shall state (1)
60 that continuation in the home is contrary to the best
61 interests of the child and state the reasons therefor; (2)
62 whether or not the department made reasonable efforts
63 to prevent the child's removal from his or her home; (3)
64 whether or not the state department made a reasonable

65 effort to prevent the placement or that the emergency
66 situation made such efforts unreasonable or impossible;
67 and (4) what efforts should be made by the department
68 to facilitate the child's return home: *Provided, however,*
69 That if the court grants an improvement period as
70 provided in subsection (b), section two of this article, the
71 sixty-day limit upon temporary custody may be waived.

72 (c) If a child or children shall, in the presence of a
73 child protective service worker of the division of human
74 services, be in an emergency situation which constitutes
75 an imminent danger to the physical well-being of the
76 child or children, as that phrase is defined in section
77 three, article one of this chapter, and if such worker has
78 probable cause to believe that the child or children will
79 suffer additional child abuse or neglect or will be
80 removed from the county before a petition can be filed
81 and temporary custody can be ordered, the worker may,
82 prior to the filing of a petition, take the child or children
83 into his or her custody without a court order: *Provided,*
84 That after taking custody of such child or children prior
85 to the filing of a petition, the worker shall forthwith
86 appear before a circuit judge or a juvenile referee of the
87 county wherein custody was taken, or if no such judge
88 or referee be available, before a circuit judge or a
89 juvenile referee of an adjoining county, and shall
90 immediately apply for an order ratifying the emergency
91 custody of the child pending the filing of a petition. The
92 circuit court of every county in the state shall appoint
93 at least one of the magistrates of the county to act as
94 a juvenile referee, who shall serve at the will and
95 pleasure of the appointing court, and who shall perform
96 the functions prescribed for such position by the
97 provisions of this subsection. The parents, guardians or
98 custodians of the child or children may be present at the
99 time and place of application for an order ratifying
100 custody, and if at the time the child or children are
101 taken into custody by the worker, the worker knows
102 which judge or referee is to receive the application, the
103 worker shall so inform the parents, guardians or
104 custodians. The application for emergency custody may
105 be on forms prescribed by the supreme court of appeals
106 or prepared by the prosecuting attorney or the appli-

107 cant, and shall set forth facts from which it may be
108 determined that the probable cause described above in
109 this subsection exists. Upon such sworn testimony or
110 other evidence as the judge or referee deems sufficient,
111 the judge or referee may order the emergency taking
112 by the worker to be ratified. If appropriate under the
113 circumstances, the order may include authorization for
114 an examination as provided for in subsection (b), section
115 four of this article. If a referee issues such an order, the
116 referee shall by telephonic communication have such
117 order orally confirmed by a circuit judge of the circuit
118 or an adjoining circuit who shall on the next judicial day
119 enter an order of confirmation. If the emergency taking
120 is ratified by the judge or referee, emergency custody
121 of the child or children shall be vested in the state
122 department until the expiration of the next two judicial
123 days, at which time any such child taken into emergency
124 custody shall be returned to the custody of his or her
125 parent, guardian or custodian unless a petition has been
126 filed and custody of the child has been transferred under
127 the provisions of section three of this article.

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

1 (a) Following a determination pursuant to section two
2 of this article wherein the court finds a child to be
3 abused or neglected, the department shall file with the
4 court a copy of the child's case plan, including the
5 permanency plan for the child. The term case plan
6 means a written document that includes, where appli-
7 cable, the requirements of the family case plan as
8 provided for in section three, article six-d of this chapter
9 and that also includes at least the following: A descrip-
10 tion of the type of home or institution in which the child
11 is to be placed, including a discussion of the appropri-
12 ateness of the placement and how the agency which is
13 responsible for the child plans to assure that the child
14 receives proper care and that services are provided to
15 the parents, child and foster parents in order to improve
16 the conditions in the parent(s) home, facilitate return of
17 the child to his or her own home or the permanent
18 placement of the child, and address the needs of the
19 child while in foster care, including a discussion of the

20 appropriateness of the services that have been provided
21 to the child. The term permanency plan refers to that
22 part of the case plan which is designed to achieve a
23 permanent home for the child in the least restrictive
24 setting available. The plan must document efforts to
25 ensure that the child is returned home within approx-
26 imate time lines for reunification as set out in the plan.
27 If reunification is not the permanency plan for the child,
28 the plan must state why reunification is not appropriate
29 and detail the alternative placement for the child to
30 include approximate time lines for when such placement
31 is expected to become a permanent placement. This case
32 plan shall serve as the family case plan for parents of
33 abused or neglected children. Copies of the child's case
34 plan shall be sent to the child's attorney and parent,
35 guardian or custodian at least five days prior to the
36 dispositional hearing. The court shall forthwith proceed
37 to disposition giving both the petitioner and respondents
38 an opportunity to be heard. The court shall give
39 precedence to dispositions in the following sequence:

40 (1) Dismiss the petition;

41 (2) Refer the child, the abusing parent, or other family
42 members to a community agency for needed assistance
43 and dismiss the petition;

44 (3) Return the child to his or her own home under
45 supervision of the state department;

46 (4) Order terms of supervision calculated to assist the
47 child and any abusing parent or parents or custodian
48 which prescribe the manner of supervision and care of
49 the child and which are within the ability of any parent
50 or parents or custodian to perform;

51 (5) Upon a finding that the abusing parent or parents
52 are presently unwilling or unable to provide adequately
53 for the child's needs, commit the child temporarily to the
54 custody of the state department, a licensed private child
55 welfare agency or a suitable person who may be
56 appointed guardian by the court. The court order shall
57 state: (1) That continuation in the home is contrary to
58 the best interests of the child and why; and (2) whether
59 or not the state department made a reasonable effort to

60 prevent the placement to include a statement of what
61 efforts were made or that the emergency situation made
62 such efforts unreasonable or impossible; and (3) the
63 specific circumstances of the situation which makes
64 such efforts unreasonable if services were not offered by
65 the department. The court order shall also determine
66 under what circumstances the child's commitment to the
67 department shall continue. Considerations pertinent to
68 the determination include whether the child should (1)
69 be continued in foster care for a specified period, (2)
70 should be considered for adoption, (3) because of a
71 child's special needs or circumstances, be continued in
72 foster care on a permanent or long-term basis, or (4) be
73 continued in foster care until reunification is achieved.
74 The court may order services to meet the special needs
75 of the child. Whenever the court transfers custody of a
76 youth to the department of human services, an appropriate
77 order of financial support by the parents or
78 guardians shall be entered in accordance with section
79 five, article seven of this chapter; or

80 (6) Upon a finding that there is no reasonable
81 likelihood that the conditions of neglect or abuse can be
82 substantially corrected in the near future, and when
83 necessary for the welfare of the child, terminate the
84 parental or custodial rights and/or responsibilities of the
85 abusing parent and commit the child to the permanent
86 sole custody of the nonabusing parent, if there be one,
87 or, if not, to either the permanent guardianship of the
88 state department or a licensed child welfare agency. If
89 the court shall so find, then in fixing its dispositional
90 order, the court shall consider the following factors: (1)
91 The child's need for continuity of care and caretakers;
92 (2) the amount of time required for the child to be
93 integrated into a stable and permanent home environ-
94 ment; and (3) other factors as the court considers
95 necessary and proper. Notwithstanding any other
96 provisions of this article, the permanent parental rights
97 shall not be terminated if a child fourteen years of age
98 or older or otherwise of an age of discretion as deter-
99 mined by the court, objects to such termination. No
100 adoption of a child shall take place until all proceedings
101 for termination of parental rights under this article and

102 appeals thereof are final. In determining whether or not
103 parental rights should be terminated, the court shall
104 consider the efforts made by the department to provide
105 remedial and reunification services to the parent. The
106 court order shall state: (1) That continuation in the home
107 is not in the best interest of the child and why; and (2)
108 why reunification is not in the best interests of the child;
109 and (3) whether or not the state department made a
110 reasonable effort to prevent the placement or that the
111 emergency situation made such efforts unreasonable or
112 impossible; and (4) whether or not the state department
113 made a reasonable effort to reunify the family including
114 a description of what efforts were made or that such
115 efforts were unreasonable due to specific circumstances.

116 (b) As used in this section, “no reasonable likelihood
117 that conditions of neglect or abuse can be substantially
118 corrected” shall mean that, based upon the evidence
119 before the court, the abusing adult or adults have
120 demonstrated an inadequate capacity to solve the
121 problems of abuse or neglect, on their own or with help.
122 Such conditions shall be deemed to exist in the following
123 circumstances, which shall not be exclusive:

124 (1) The abusing parent or parents have habitually
125 abused or are addicted to alcohol, controlled substances
126 or drugs, to the extent that proper parenting skills have
127 been seriously impaired and such abusing parent or
128 parents have not responded to or followed through the
129 recommended and appropriate treatment which could
130 have improved the capacity for adequate parental
131 functioning;

132 (2) The abusing parent or parents have willfully
133 refused or are presently unwilling to cooperate in the
134 development of a reasonable family case plan designed
135 to lead to the child’s return to their care, custody and
136 control;

137 (3) The abusing parent or parents have not responded
138 to or followed through with a reasonable family case
139 plan or other rehabilitative efforts of social, medical,
140 mental health or other rehabilitative agencies designed
141 to reduce or prevent the abuse or neglect of the child,

142 as evidenced by the continuation or insubstantial
143 diminution of conditions which threatened the health,
144 welfare or life of the child;

145 (4) The abusing parent or parents have abandoned the
146 child;

147 (5) The abusing parent or parents have repeatedly or
148 seriously injured the child physically or emotionally, or
149 have sexually abused or sexually exploited the child, and
150 the degree of family stress and the potential for further
151 abuse and neglect are so great as to preclude the use
152 of resources to mitigate or resolve family problems or
153 assist the abusing parent or parents in fulfilling their
154 responsibilities to the child; or

155 (6) The abusing parent or parents have incurred
156 emotional illness, mental illness or mental deficiency of
157 such duration or nature as to render such parent or
158 parents incapable of exercising proper parenting skills
159 or sufficiently improving the adequacy of such skills.

160 (c) The court may as an alternative disposition allow
161 to the parents or custodians an improvement period not
162 to exceed twelve months. During this period the
163 parental rights shall not be permanently terminated and
164 the court shall require the parent to rectify the
165 conditions upon which the determination was based. No
166 more than one such post-dispositional improvement
167 period may be granted. The court may order the child
168 to be placed with the parents, a relative, the state
169 department or other appropriate placement during the
170 period. At the end of the period the court shall hold a
171 hearing to determine whether the conditions have been
172 adequately improved, and at the conclusion of such
173 hearing, shall make a further dispositional order in
174 accordance with this section.

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

1 (a) If, twelve months after receipt (by the state
2 department or its authorized agent) of physical custody
3 of a child either by a court ordered placement or by a
4 voluntary agreement, the state department has not
5 placed a child in permanent foster care or an adoptive

6 home or placed the child with a natural parent, the state
7 department shall file with the court a petition for review
8 of the case. The department shall also file with the court
9 a report detailing the efforts that have been made to
10 place the child in a permanent home and copies of the
11 child's case plan including the permanency plan as
12 defined in section five, article six of this chapter. Copies
13 of the report shall be sent to the child's attorney and be
14 made available to the child's parent(s) or guardian.
15 "Permanent foster care" shall mean a written arrange-
16 ment with an adult or adults following a six-month trial
17 period whereby the state department places the care,
18 custody and control of a child until the child's emanci-
19 pation with such adult or adults. The court shall
20 schedule a hearing in chambers, giving notice and the
21 right to be present to: The child's attorney; the child, if
22 twelve years of age or older; the child's parents; the
23 child's guardians; the child's foster parents; and such
24 other persons as the court may in its discretion direct.
25 The child's presence may be waived by the child's
26 attorney at the request of the child or if the child would
27 suffer emotional harm. The purpose of the hearing is to
28 review the child's case, to determine whether and under
29 what conditions the child's commitment to the depart-
30 ment shall continue, and to determine what efforts are
31 necessary to provide the child with a permanent home.
32 At the conclusion of the hearing the court shall in
33 accordance with the best interests of the child enter an
34 appropriate order of disposition. The court order shall
35 state (1) whether or not the department made reasonable
36 effort to prevent out-of-home placement or that the
37 specific situation made such effort unreasonable, (2) the
38 permanency plan for the child, and (3) services required
39 to meet the child's needs. The court shall possess
40 continuing jurisdiction over cases reviewed under this
41 section for so long as a child remains in temporary foster
42 care, or, when a child is returned to his or her natural
43 parents subject to conditions imposed by the court, for
44 so long as the conditions are effective.

45 (b) The state department shall file a supplementary
46 petition for review with the court within eighteen
47 months and every eighteen months thereafter for every

48 child that remains in the physical or legal custody of the
49 state department until the child is placed in an adoptive
50 home or permanent foster care or returned to his or her
51 parents.

52 (c) The state department shall annually report to the
53 court the current status of the placements of children
54 in permanent care and custody of the state department
55 who have not been adopted.

56 (d) The state department shall file a report with the
57 court in any case where any child in the temporary or
58 permanent custody of the state receives more than three
59 placements in one year no later than thirty days after
60 the third placement. This report shall be provided to all
61 parties and their counsel. Upon motion by any party, the
62 court shall review these placements and determine what
63 efforts are necessary to provide the child with a stable
64 foster or temporary home: *Provided*, That no report
65 shall be provided to any parent or parent's attorney
66 whose parental rights have been terminated pursuant to
67 this article.

68 (e) The state department shall notify, in writing, the
69 court, the child, if over the age of twelve, the child's
70 attorney, the parents and the parents' attorney forty-
71 eight hours prior to the move if this is a planned move,
72 or within forty-eight hours of the next business day after
73 the move if this is an emergency move, except where
74 such notification would endanger the child or the foster
75 family. This notice shall not be required in any case
76 where the child is in imminent danger in the child's
77 current placement. The location of the child need not be
78 disclosed, but the purpose of the move should be. This
79 requirement is not waived by placement of the child in
80 a home or other residence maintained by a private
81 provider. No notice shall be provided pursuant to this
82 provision to any parent or parent's attorney whose
83 parental rights have been terminated pursuant to this
84 article.

85 (f) Nothing in this article precludes any party from
86 petitioning the court for review of the child's case at any
87 time. The court shall grant such petition upon a showing

88 that there is a change in circumstance or needs of the
89 child that warrants court review.

§49-6-11. Conviction for offenses against children.

1 In any case where a person is convicted of an offense
2 described in sections twelve and twenty-six, article
3 eight, chapter sixty-one; section one, article eight-b,
4 chapter sixty-one, et seq.; and section one, article eight-
5 d, chapter sixty-one of this code against any child and
6 further has custodial, visitation, or other parental rights
7 to the child, at the time of sentencing, the court shall
8 make a finding that the person is an abusing parent
9 within the meaning of section one, article six, chapter
10 forty-nine et seq. and the court shall take such further
11 steps as is required by this article.

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

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

1 When any medical, dental or mental health profes-
2 sional, Christian Science practitioner, religious healer,
3 school teacher or other school personnel, social service
4 worker, child care or foster care worker, emergency
5 medical services personnel, peace officer or law-
6 enforcement official, member of the clergy, circuit court
7 judge, family law master, or magistrate has reasonable
8 cause to suspect that a child is neglected or abused or
9 observes the child being subjected to conditions that are
10 likely to result in abuse or neglect, such person shall
11 immediately, and not more than forty-eight hours after
12 suspecting this abuse, report the circumstances or cause
13 a report to be made to the state department of human
14 services: *Provided*, That in any case where the reporter
15 believes that the child has been seriously physically
16 injured or sexually abused or sexually assaulted, the
17 reporter shall also immediately report, or cause a report
18 to be made to the department of public safety, and any
19 law-enforcement agency having jurisdiction to investi-
20 gate the complaint: *Provided, however*, That any person
21 required to report under this article who is a member
22 of the staff of a public or private institution, school,

23 facility or agency shall immediately notify the person in
24 charge of such institution, school, facility or agency or
25 a designated agent thereof, who shall report or cause a
26 report to be made. However, nothing in this article is
27 intended to prevent individuals from reporting on their
28 own behalf.

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

§49-6A-5. Reporting procedures.

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

10 A copy of any report of serious physical, injury, or
11 sexual abuse or assault, shall be forwarded by the
12 department to the appropriate law-enforcement agency,
13 the prosecuting attorney or the coroner or medical
14 examiner's office. All reports under this article shall be
15 confidential, and unless there are pending proceedings
16 with regard thereto, shall be destroyed six years
17 following their preparation. Reports of known or
18 suspected institutional child abuse or neglect shall be
19 made and received as all other reports made pursuant
20 to this article. Such documentation shall be provided
21 within three business days of receipt by the child
22 protective services.

**§49-6A-9. Establishment of child protective services;
general duties and powers; cooperation of
other state agencies.**

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

4 (b) Except in cases involving institutional abuse or
5 cases in which police investigation also appears appropriate,
6 the child protective service shall be the sole public
7 agency responsible for investigating or arranging for
8 investigation and coordinating the investigation of all
9 reports of child abuse or neglect: *Provided*, That under
10 no circumstances shall investigating personnel be
11 relatives of the accused, the child or the families
12 involved. In accordance with the local plan for child
13 protective services, it shall provide protective services to
14 prevent further abuse or neglect of children and provide
15 for or arrange for and coordinate and monitor the
16 provision of those services necessary to ensure the safety
17 of children. The local child protective service shall be
18 organized to maximize the continuity of responsibility,
19 care and service of individual workers for individual
20 children and families.

21 Each local child protective service shall:

22 (1) Receive or arrange for the receipt of all reports of
23 children known or suspected to be abused or neglected
24 on a twenty-four hour, seven-day-a-week basis and cross-
25 file all such reports under the names of the children, the
26 family, any person substantiated as being an abuser or
27 neglecter by investigation of the department of human
28 services, with use of such cross-filing of such person's
29 name limited to the internal use of the department;

30 (2) Provide or arrange for emergency children's
31 services to be available at all times;

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

36 (c) In those cases in which the local child protective
37 service determines that the best interests of the child
38 require court action, the local child protective service
39 shall initiate the appropriate legal proceeding.

40 (d) The local child protective service shall be respon-
41 sible for providing, directing or coordinating the
42 appropriate and timely delivery of services to any child
43 suspected or known to be abused or neglected, including
44 services to the child's family and those responsible for
45 the child's care; and

46 (e) To carry out the purposes of this article, all
47 departments, boards, bureaus and other agencies of the
48 state or any of its political subdivisions and all agencies
49 providing services under the local child protective
50 service plan, shall, upon request, provide to the local
51 child protective service such assistance and information
52 as will enable it to fulfill its responsibilities.

ARTICLE 7. GENERAL PROVISIONS.

**§49-7-28. General provisions to read uniform court
orders regarding custody; promulgation of
rules.**

1 The supreme court shall, in consultation with the
2 department of health and human resources, develop and
3 cause to be implemented, as soon as practicable but no
4 later than the first day of September, one thousand nine
5 hundred ninety-two; forms for court orders which are
6 consistent with the provision of chapter forty-nine of this
7 code as well as the provisions of Title 142 U.S.C. Section
8 620, et seq. and Title 42 U.S.C. Section 670, et seq.
9 relating to the promulgation of uniform court orders for
10 placement of minor children and the regulations
11 promulgated thereunder, for the use in the magistrate
12 and circuit courts of the state.

CHAPTER 56. PLEADING AND PRACTICE.

**ARTICLE 10. MISCELLANEOUS PROVISIONS RELATING TO
PROCEDURE.**

**§56-10-8. Priority of cases involving placement of
children.**

1 Any action or motion which involves a contested issue
2 regarding the permanent or temporary placement of a
3 minor child shall be given priority over any civil action
4 before the court except actions in which trial is in
5 progress and actions brought under section one, article

6 two-a, chapter forty-eight, et seq., of this code and shall
7 be docketed immediately upon filing.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9a. Stalking; penalties; definitions.

1 (a) Any person who shall intentionally and closely
2 follow, lie in wait, or make repeated threats to cause
3 bodily injury to any person with whom that person
4 formerly resided or cohabited or with whom that person
5 formerly engaged in a sexual or intimate relationship,
6 with the intent to cause or causing said person emotional
7 distress or placing said person in fear of his or her
8 personal safety shall be guilty of a misdemeanor and
9 upon conviction thereof, shall be imprisoned in the
10 county jail for not more than six months, or be fined not
11 more than one thousand dollars, or both find and
12 imprisoned.

13 (b) Any person who violates subsection (a) when there
14 is a temporary restraining order or a restraining order,
15 or both, in effect, granted pursuant to the provisions of
16 section nine-b of this article which prohibits the conduct
17 referred to in said section, is guilty of a misdemeanor,
18 and upon conviction thereof, shall be imprisoned in the
19 county jail for not more than one year, or be fined not
20 more than three thousand dollars, or both fined and
21 imprisoned.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-13. Incest; limits on interviews of children eleven years old or less; evidence.

1 (a) In any prosecution under the provisions of section
2 twelve of this article, the court may provide by rule for
3 reasonable limits on the number of interviews to which
4 a victim who is eleven years old or less must submit for
5 law enforcement or discovery purposes. To the extent
6 possible the rule shall protect the mental and emotional
7 health of the child from the psychological damage of
8 repeated interrogation and at the same time preserve
9 the rights of the public and the defendant.

10 (b) At any stage of the proceedings, in any prosecution
11 under this article, the court may permit a child who is
12 eleven years old or less to use anatomically correct dolls,
13 mannequins or drawings to assist such child in
14 testifying.

15 (c) In any prosecution under this article in which the
16 victim's lack of consent is based solely on the incapacity
17 to consent because such victim was below a critical age,
18 evidence of specific instances of the victim's sexual
19 conduct, opinion evidence of the victim's sexual conduct
20 and reputation evidence of the victim's sexual conduct
21 shall not be admissible. In any other prosecution under
22 this article, evidence of specific instances of the victim's
23 prior sexual conduct with the defendant shall be
24 admissible on the issue of consent: *Provided*, That such
25 evidence heard first out of the presence of the jury is
26 found by the judge to be relevant.

27 (d) In any prosecution under this article evidence of
28 specific instances of the victim's sexual conduct with
29 persons other than the defendant, opinion evidence of
30 the victim's sexual conduct and reputation evidence of
31 the victim's sexual conduct shall not be admissible:
32 *Provided*, That such evidence shall be admissible solely
33 for the purpose of impeaching credibility, if the victim
34 first makes his or her previous sexual conduct an issue
35 in the trial by introducing evidence with respect thereto.

36 (e) In any prosecution under this article, neither age
37 nor mental capacity of the victim shall preclude the
38 victim from testifying.

39 (f) In any case where a person is convicted of an
40 offense described herein against a child and further has
41 or may have custodial, visitation or other parental rights
42 to the child, the court shall find that the person is an
43 abusing parent within the meaning of section one,
44 article six, chapter forty-nine of this code, and shall take
45 such further action in accord with the provisions of
46 section one, article six, chapter forty-nine of this code.

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-11a. Convictions for offenses against children.

1 In any case where a person is convicted of an offense
2 described in this article against a child and further has
3 or may have custodial, visitation or other parental rights
4 to the child, the court shall find that the person is an
5 abusing parent within the meaning of section one,
6 article six, chapter forty-nine of this code, and shall take
7 such further action in accord with the provisions of
8 section one, article six, chapter forty-nine of this code.

ARTICLE 8D. CHILD ABUSE.

§61-8D-9. Convictions for offenses against children.

1 In any case where a person is convicted of an offense
2 described in this article against a child and further has
3 or may have custodial, visitation or other parental rights
4 to the child, the court shall find that such person is an
5 abusing parent within the meaning of section one,
6 article six, chapter forty-nine of this code and shall take
7 such further action in accord with the provisions of
8 section one, article six, chapter forty-nine of this code.

ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.

§61-11A-8. Victim notification of defendant's release.

1 At the time a complaint is sworn out for a charge of
2 murder, aggravated robbery, sexual assault in the first
3 degree, kidnapping, arson, sexual offenses against
4 minors, or any violent crime against a spouse, former
5 spouse, child or stepchild, the prosecuting attorney shall
6 provide written notice to the victim or victim's family
7 member that he or she may be notified prior to and upon
8 the release or escape of the defendant to work release,
9 home confinement, parole, furlough or upon the escape
10 from any correctional facility.

11 (b) The commissioner of corrections, regional jail
12 supervisors or city sheriff operating a jail which releases
13 any person shall, from which they have received a
14 written request for notification, shall provide written
15 notice to the last known address or addresses provided
16 by the victim, or in the case of a minor child, to the
17 custodial parent of the child, upon release of the
18 defendant. Additionally, notice provided in the case of
19 escape shall be by telephone.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1C. BAIL.

§62-1C-17a. Bail in situations of alleged child abuse.

1 (a) When the offense charged is an assault or other
2 offense against a child who is defined in chapter forty-
3 nine of this code, it shall be a condition of bond that the
4 defendant shall not live in the same residence as and
5 shall have no contact with the victim of the alleged
6 offense, and the court may make such other conditions
7 of bond with respect to contact with the victim as it
8 deems necessary under the circumstances to protect the
9 child: *Provided*, That the requirement of no contact with
10 the victim of the alleged offense and all other conditions
11 of bond may be reviewed by summary petition from the
12 magistrate court to the circuit court or from the circuit
13 court to the supreme court of appeals or any justice
14 thereof.

15 (b) In cases where the charge is a sexual offense, as
16 defined in chapter sixty-one of this code, against any
17 person, the court, upon a showing of cause, may make
18 such conditions of bond on the defendant or on any
19 witness bond issued under section fifteen of this article
20 as it deems necessary with respect to contact with the
21 victim.

§62-1C-17c. Bail in cases of crimes between family or household members.

1 (a) When the offense charged is a crime against a
2 family or household member, it may be a condition of
3 bond that the defendant shall not have any contact
4 whatsoever, direct or indirect, verbal or physical, with
5 the victim or complainant.

6 (b) In determining conditions of release, the issuing
7 authority shall consider whether the defendant poses a
8 threat or danger to the victim or other family or
9 household member. If the issuing authority makes such
10 a determination, it shall require as a condition of bail
11 that the defendant refrain from entering the residence
12 or household of the victim, the victim's school, and the
13 victim's place of employment or otherwise contacting

14 the victim and/or minor child or household member in
15 any manner whatsoever, and shall refrain from having
16 any further contact with the victim. A violation of this
17 condition may be punishable by the forfeiture of bail
18 and the issuance of a bench warrant for the defendant's
19 arrest or remanding the defendant to custody or a
20 modification of the terms of bail.

21 (c) The clerk of the court issuing an order pursuant
22 to this section shall issue certified copies of the
23 conditions of bail to the victim upon request without
24 cost.

25 (d) Where a law-enforcement officer observes any
26 violation of bail condition, including the presence of the
27 defendant or at the home of the victim, the officer shall
28 immediately arrest the defendant, and detain the
29 defendant pending a hearing for revocation of bail.

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

**§62-11A-1. Release for work and other purposes by
courts of record with criminal jurisdiction.**

1 (1) When a defendant is sentenced or committed for
2 a term of one year or less by a court of record having
3 criminal jurisdiction, such court may in its order grant
4 to such defendant the privilege of leaving the jail during
5 necessary and reasonable hours for any of the following
6 purposes:

7 (a) To work at his employment;

8 (b) To seek employment;

9 (c) To conduct his own business or to engage in other
10 self-employment, including, in the case of a woman,
11 housekeeping and attending to the needs of her family;

12 (d) To attend an educational institution;

13 (e) To obtain medical treatment;

14 (f) To devote time to any other purpose approved of
15 or ordered by the court, including participation in the
16 litter control program of the county unless the court
17 specifically finds that this alternative service would be
18 inappropriate.

19 (2) Whenever an inmate who has been granted the
20 privilege of leaving the jail under this section is not
21 engaged in the activity for which such leave is granted,
22 he shall be confined in jail.

23 (3) An inmate sentenced to ordinary confinement may
24 petition the court at any time after sentence for the
25 privilege of leaving jail under this section and may
26 renew his petition in the discretion of the court. The
27 court may withdraw the privilege at any time by order
28 entered with or without notice.

29 (4) If the inmate has been granted permission to leave
30 the jail to seek or take employment, the court's probation
31 officers, or if none, the state's division of corrections
32 shall assist him in obtaining suitable employment and
33 in making certain that employment already obtained is
34 suitable. Employment shall not be deemed suitable if
35 the wages or working conditions or other circumstances
36 present a danger of exploitation or of interference in a
37 labor dispute in the establishment in which the inmate
38 would be employed.

39 (5) If an inmate is employed for wages or salary, the
40 clerk of the court shall collect the same, or shall require
41 the inmate to turn over his wages or salary in full when
42 received, and shall deposit the same in a trust account
43 and shall keep a ledger showing the status of the account
44 of each inmate. Earnings levied upon pursuant to writ
45 of attachment or execution or in other lawful manner
46 shall be collected from the employer and shall not be
47 collected hereunder, but when the clerk has requested
48 transmittal of earnings prior to levy, such request shall
49 have priority. When an employer transmits such
50 earnings to the clerk pursuant to this subsection he shall
51 have no liability to the inmate for such earnings. From
52 such earnings the clerk shall pay the inmate's board and
53 personal expenses both inside and outside the jail and
54 shall deduct installments on fines, if any, and, to the
55 extent directed by the court, shall pay the support of the
56 inmate's dependents: *Provided*, That at least twenty-five
57 percent of the earnings collected by the clerk on behalf
58 of an inmate shall be paid for the support of such
59 inmate's dependents, if any. If sufficient funds are

60 available after making the foregoing payments, the
61 clerk may, with the consent of the inmate, pay, in whole
62 or in part, any unpaid debts of the inmate. Any balance
63 shall be retained, and shall be paid to the inmate at the
64 time of his discharge.

65 (6) An inmate who is serving his sentence pursuant
66 to this section shall be eligible for a reduction of his
67 term for good behavior and faithful performance of
68 duties in the same manner as if he had served his term
69 in ordinary confinement.

70 (7) The court shall not make an order granting the
71 privilege of leaving the institution under this section
72 unless it is satisfied that there are adequate facilities for
73 the administration of such privilege in the jail or other
74 institution in which the defendant will be confined.

75 (8) In every case wherein the defendant has been
76 convicted of an offense defined in section thirteen,
77 article eight, chapter sixty-one, articles eight-b and
78 eight-d, chapter sixty-one of this code, against a child,
79 the defendant shall not live in the same residence as any
80 minor child, nor exercise visitation with any minor child
81 and shall have no contact with the victim of the offense:
82 *Provided*, That the defendant may petition the court of
83 the circuit wherein he was so convicted for a modifica-
84 tion of this term and condition of this probation and the
85 burden shall rest upon the defendant to demonstrate
86 that a modification is in the best interest of the child.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-9. Conditions of release on probation.

1 Release on probation shall be upon the following
2 conditions:

3 (1) That the probationer shall not, during the term of
4 his probation, violate any criminal law of this or any
5 other state or of the United States.

6 (2) That he shall not, during the term of his probation,
7 leave the state without the consent of the court which
8 placed him on probation.

9 (3) That he shall comply with the rules and regula-

10 tions prescribed by the court or by the board of
11 probation and parole, as the case may be, for his
12 supervision by the probation officer.

13 (4) That in every case wherein the probationer has
14 been convicted of an offense defined in section thirteen,
15 article eight, chapter sixty-one, articles eight-b and
16 eight-d, chapter sixty-one of this code, against a child,
17 the probationer shall not live in the same residence as
18 any minor child, nor exercise visitation with any minor
19 child, and shall have no contact with the victim of the
20 offense: *Provided*, That the probationer may petition the
21 court of the circuit wherein he was so convicted for a
22 modification of this term and condition of his probation
23 and the burden shall rest upon the probationer to
24 demonstrate that a modification is in the best interest
25 of the child.

26 In addition, the court may impose, subject to modifi-
27 cation at any time, any other conditions which it may
28 deem advisable, including, but not limited to, any of the
29 following:

30 (1) That he shall make restitution or reparation, in
31 whole or in part, immediately or within the period of
32 probation, to any party injured by the crime for which
33 he has been convicted.

34 (2) That he shall pay any fine assessed and the costs
35 of the proceeding in such installments as the court may
36 direct.

37 (3) That he shall make contribution from his earnings,
38 in such sums as the court may direct, for the support
39 of his dependents.

40 (4) That he shall, in the discretion of the court, be
41 required to serve a period of confinement in the county
42 jail of the county in which he was convicted for a period
43 not to exceed one third of the minimum sentence
44 established by law or one third of the least possible
45 period of confinement in an indeterminate sentence, but
46 in no case shall such period of confinement exceed six
47 consecutive months. The court shall have authority to
48 sentence the defendant within such six-month period to

49 intermittent periods of confinement including, but not
50 limited to, weekends or holidays and may grant unto the
51 defendant intermittent periods of release in order that
52 he may work at his employment or for such other
53 reasons or purposes as the court may deem appropriate:
54 *Provided*, That the provisions of article eleven-a of this
55 chapter shall not apply to such intermittent periods of
56 confinement and release except to the extent that the
57 court may direct. If a period of confinement is required
58 as a condition of probation, the court shall make special
59 findings that other conditions of probation are inade-
60 quate and that a period of confinement is necessary.

§62-12-17. Conditions of release on parole.

1 Release on parole shall be upon the following
2 conditions:

3 (1) That the parolee shall not, during the period of his
4 parole, violate any criminal law of this or any other
5 state, or of the United States.

6 (2) That he shall not, during the period of his parole,
7 leave the state without the consent of the board.

8 (3) That he shall comply with the rules and regula-
9 tions prescribed by the board for his supervision by the
10 probation and parole officer.

11 (4) That in every case wherein the parolee has been
12 convicted of an offense defined in section two, article
13 eight, chapter sixty-one; or articles eight-b and eight-d,
14 chapter sixty-one of this code, against a child, the
15 parolee shall not live in the same residence as any minor
16 child, nor exercise visitation with any minor child, and
17 shall have no contact with the victim of the offense:
18 *Provided*, That the parolee may petition the court of the
19 circuit wherein he was so convicted for a modification
20 of this term and condition of his probation and the
21 burden shall rest upon the parolee to demonstrate that
22 a modification is in the best interest of the child.

23 In addition, the board may impose, subject to modi-
24 fication at any time, any other conditions which the
25 board may deem advisable.

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

James Heck

Chairman Senate Committee

Ernest C. Moore

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Harold E. Palmer

Clerk of the Senate

Donald G. Kopp

Clerk of the House of Delegates

Kurt Buntelle

President of the Senate

Robert C. Taylor

Speaker of the House of Delegates

The within *is approved* this the *27th*
day of *March*, 1992.

Walter D. Taylor

Governor

PRESENTED TO THE

GOVERNOR

Date 3/26/92

Time 11:40 pm