WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

ENROLLED

HOUSE BILL No. H.759

(By Delegates Braun and Douglass)

Passed March 7, 1992

In Effect from Passage
ENROLLED

H. B. 4759

(By Delegates Brown and Douglas)

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

AN ACT to repeal section eighteen, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section thirty-one, article seven of said chapter; to amend and reenact section eighteen, article four, chapter twenty-three of said code; to amend article twenty-two of said chapter twenty-nine by adding thereto a new section, designated section twenty-seven-a; to amend and reenact section three, article two, chapter thirty-three of said code; to amend and reenact sections one, fifteen, seventeen and thirty-three, article two, chapter forty-eight of said code; to amend and reenact section three, article one and sections one, four, six and seven, article two, chapter forty-eight-a of said code; to further amend said article two by adding thereto two new sections, designated sections twenty-four and twenty-five; to amend and reenact section three, article three of said chapter forty-eight-a; to further amend said article three by adding thereto two new sections, designated section nine and ten; to amend and reenact section one, article five and sections one and three, article six of said chapter forty-eight-a; and to amend article five, chapter sixty-one of said code by adding thereto a new section, designated section twenty-nine, all relating to the enforcement of family obligations generally; authorizing the attachment of workers' compensation benefits for enforcing support orders; rearranging and clarifying certain current
language; compelling the director of the lottery to forward certain prize moneys to the child advocate office and to enter into written agreements to establish such collection procedure; mandating the commissioner of insurance to enforce certain provisions; redefining certain terms; injunctive relief upon ordering divorce or annulment or granting decree of separate maintenance; revising the process in which the recording of abstracts of support judgments become liens; establishing an accounting procedure; making a crime of false swearing for the deliberate failure to disclose assets; changing certain terminology consistent with government reorganization; exempting certain positions from civil service requirements; changing certain powers and duties of the director; directing employers to furnish certain information to the child advocate office; creating a crime for the failure to report such information and setting forth criminal penalties therefor; mandating all public and private entities to cooperate in locating missing parents; exceptions; prescribing duties of the children’s advocate, subject to the supervision and control of the director of the child advocate office; revising duties of children’s advocate with respect to investigation of support orders; providing that public agencies shall bill the child advocate office for fees and costs incurred; empowering the child advocate to subpoena certain information; authorizing the child advocate office to institute support and paternity proceedings; when child advocate may act on behalf of the department; revising conditions under which married women may file paternity actions; changing certain medical testing standards regarding paternity determination; when defendant may challenge tests; limiting period of time for additional testing; creating certain legal presumptions; providing for the admissibility of and weight to be given certain evidence; creating the crime of failing to meet an obligation to provide support; setting forth when such crime is a misdemeanor and when such crime is a felony; and establishing criminal penalties.

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

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.

1 Except as provided by this section, compensation shall be paid only to such employees or their dependents, and shall be exempt from all claims of creditors and from any attachment, execution or assignment other than compensation to counsel for legal services, under the provisions of, and subject to the limitations contained in section five, article five of this chapter, and other than for the enforcement of orders for child or spousal support entered pursuant to the provisions of chapters forty-eight and forty-eight-a of this code. Payments may be made in such periodic installments as determined by the commissioner in each case, but in no event less
frequently than semimonthly for any temporary award and monthly for any permanent award. Payments for permanent disability shall be paid on or before the third day of the month in which they are due. In all cases where compensation is awarded or increased, the amount thereof shall be calculated and paid from the date of disability.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-27a. Payment of prizes to the child advocate office.

(a) Upon notification by the child advocate office that a person entitled to a prize or any winning ticket is delinquent in the payment of child support or spousal support, the director shall forward to the child advocate office such portion of any prize distributed directly from the state lottery office and that is available to pay all or any portion of the delinquent support payment.

(b) The director shall enter into a written agreement with the child advocate office for the purpose of establishing a procedure for the collection of prizes as set forth in subsection (a) of this section which shall include a method by which the child advocate office may receive the names of lottery winners as expeditiously as possible.

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-3. Duties of the commissioner; employment of legal counsel.

(a) The commissioner shall enforce the provisions of this chapter and perform the duties required thereunder; shall affix the commissioner's official seal to all documents and papers required to be filed in other states by domestic insurers and to other papers when an official seal is required; and shall, on or before the tenth day of each month, pay into the state treasury all fees and moneys which he or she has received during the
(b) Notwithstanding any provisions of this code to the contrary, the commissioner may acquire such legal services as are deemed necessary, including representation of the commissioner before any court or administrative body. Such counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commissioner may call upon the attorney general for legal assistance and representation as provided by law.

**CHAPTER 48. DOMESTIC RELATIONS.**

**ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.**

§48-2-1. Definitions.

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

(b) "Antenuptial agreement" or "prenuptial agreement" means an agreement between a man and woman before marriage, but in contemplation and generally in consideration of marriage, whereby the property rights and interests of the prospective husband and wife, or both of them, are determined, or where property is secured to either or both of them, to their separate estate, or to their children or other persons. An antenuptial agreement may include provisions which define the respective property rights of the parties during the marriage, or in the event of the death of either or both of the parties, and may provide for the disposition of marital property upon an annulment of the marriage or a divorce or separation of the parties. A prenuptial agreement is void if at the time it is made either of the parties is a minor.
(c) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program. "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(d) "Income" includes, but is not limited to, the following:

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

(2) Any payment due or to be due in the future to an individual from a profit-sharing plan, a pension plan, an insurance contract, an annuity, social security, unemployment compensation, supplemental employment benefits, workers' compensation benefits, state lottery winnings and prizes, and overtime pay;

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

(e) "Marital property" means:

(1) All property and earnings acquired by either spouse during a marriage, including every valuable right and interest, corporeal or incorporeal, tangible or intangible, real or personal, regardless of the form of ownership, whether legal or beneficial, whether individually held, held in trust by a third party, or whether held by the parties to the marriage in some form of co-ownership such as joint tenancy or tenancy in common, joint tenancy with the right of survivorship, or any other form of shared ownership recognized in other jurisdictions without this state, except that marital property shall not include separate property as defined in
subsection (f) of this section; and

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

The definitions of “marital property” contained in this
subsection and “separate property” contained in subsec-
tion (f) of this section shall have no application outside
of the provisions of this article, and the common law as
to the ownership of the respective property and earnings
of a husband and wife, as altered by the provisions of
article three of this chapter and other provisions of this
code, are not abrogated by implication or otherwise,
except as expressly provided for by the provisions of this
article as such provisions are applied in actions brought
under this article or for the enforcement of rights under
this article.

(f) “Separate property” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) As an incident to requiring the payment of alimony
or child support, the court may order either party to
continue in effect existing policies of insurance covering
the costs of health care and hospitalization of the other
party and the minor children of the parties: Provided,
That if the other party is no longer eligible to be covered
by such insurance because of the granting of an
annulment or divorce, the court may require a party to
substitute such insurance with a new policy to cover the
other party, or may consider the prospective cost of such
insurance in awarding alimony to be paid in periodic
installments. If there is no such existing policy or
policies, the court shall order such health care insurance
coverage to be paid for by the noncustodial parent, if
the court determines that such health care insurance
coverage is available to the noncustodial parent at a
reasonable cost. Payments made to an insurer pursuant
to this subdivision, either directly or by a deduction
from wages, shall be deemed to be alimony, child
support or installment payments for the distribution of
marital property, in such proportion as the court shall
direct: Provided, however, That if the court does not set
forth in the order that a portion of such payments is to
be deemed child support or installment payments for the
distribution of marital property, then all such payments
made pursuant to this subdivision shall be deemed to be alimony: *Provided further,* That the designation of insurance coverage as alimony under the provisions of this subdivision shall not, in and of itself, give rise to a subsequent modification of the order to provide for alimony other than insurance for covering the costs of health care and hospitalization.

(4) As an incident to requiring the payment of alimony or child support, the court may grant the exclusive use and occupancy of the marital home to one of the parties, together with all or a portion of the household goods, furniture and furnishings reasonably necessary for such use and occupancy. Such use and occupancy shall be for a definite period, ending at a specific time set forth in the order, subject to modification upon the petition of either party. Except in extraordinary cases supported by specific findings set forth in the order granting relief, a grant of the exclusive use and occupancy of the marital home shall be limited to those situations where such use and occupancy is reasonably necessary to accommodate the rearing of minor children of the parties. The court may require payments to third parties in the form of home loan installments, land contract payments, rent, payments for utility services, property taxes, insurance coverage, or other expenses or charges reasonably necessary for the use and occupancy of the marital domicile. Payments made to a third party pursuant to this subdivision for the benefit of the other party shall be deemed to be alimony, child support or installment payments for the distribution of marital property, in such proportion as the court shall direct: *Provided,* That if the court does not set forth in the order that a portion of such payments is to be deemed child support or installment payments for the distribution of marital property, then all such payments made pursuant to this subdivision shall be deemed to be alimony. Nothing contained in this subdivision shall abrogate an existing contract between either of the parties and a third party, or affect the rights and liabilities of either party or a third party under the terms of such contract.

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

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

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

(8) The court shall, when allegations of abuse have
been proven, enjoin the offending party from molesting
or interfering with the other, or otherwise imposing any
restraint on the personal liberty of the other, or
interfering with the custodial or visitation rights of the
other. Such order may permanently enjoin the offending
party from entering the school, business or place of
employment of the other for the purpose of molesting or
harassing the other; or from contacting the other, in
person or by telephone, for the purpose of harassment
or threats; or from harassing or verbally abusing the
other in a public place.
(9) The court may order either party to take necessary steps to transfer utility accounts and other accounts for recurring expenses from the name of one party into the name of the other party or from the joint names of the parties into the name of one party. Nothing contained in this subdivision shall affect the liability of the parties for indebtedness on any such account incurred before the transfer of such account.

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

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

(e) At any time after the entry of an order pursuant to the provisions of this section, the court may, upon the verified petition of either of the parties, revise or alter such order concerning the maintenance of the parties, or either of them, and make a new order concerning the same, issuing it forthwith, as the altered circumstances or needs of the parties may render necessary to meet the ends of justice. The court may also from time to time afterward, on the verified petition of either of the parties, revise or alter such order to grant relief pursuant to subdivision (8), subsection (b) of this section, and make a new order concerning the same, issuing it forthwith, as the circumstances of the parties and the benefit of children may require. The court may also from time to time afterward, on the verified petition of either of the parties or other proper person having actual or legal custody of the minor child or children of the parties, revise or alter such order concerning the custody and support of the children, and make a new order concerning the same, issuing it forthwith, as the circumstances of the parents or other proper person or
persons and the benefit of the children may require: 

Provided, That an order providing for child support payments may be revised or altered for the reason, inter alia, that the existing order provides for child support payments in an amount that is less than eighty-five percent or more than one hundred fifteen percent of the amount that would be required to be paid under the child support guidelines promulgated pursuant to the provisions of section eight, article two, chapter forty-eight-a of this code. In granting relief under this subsection, the court may, where other means are not conveniently available, alter any prior order of the court with respect to the distribution of marital property, if such property is still held by the parties, and if necessary to give effect to a modification of alimony, child support or child custody or necessary to avoid an inequitable or unjust result which would be caused by the manner in which the modification will affect the prior distribution of marital property.

(f) In every case where a separation agreement is the basis for an award of alimony, the court, in approving the agreement, shall examine the agreement to ascertain whether it clearly provides for alimony to continue beyond the death of the payor party or to cease in such event. Where alimony is to be paid pursuant to the terms of a separation agreement which does not state whether the payment of alimony is to continue beyond the death of the payor party or is to cease, or where the parties have not entered into a separation agreement and alimony is to be awarded, the court shall specifically state as a part of its order whether such payments of alimony are to be continued beyond the death of the payor party or cease.

(g) In every case where a separation agreement is the basis for an award of alimony, the court, in approving the agreement, shall examine the agreement to ascertain whether it clearly provides for alimony to continue beyond the remarriage of the payee party or to cease in such event. Where alimony is to be paid pursuant to the terms of a separation agreement which does not state 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
the payment of alimony or child support, if the court anticipates the payment of such alimony or child support or any portion thereof to be paid out of "disposable retired or retainer pay" as that term is defined in 10 U.S.C. §1408, relating to members or former members of the uniformed services of the United States, the court shall specifically provide for the payment of an amount, expressed in dollars or as a percentage of disposable retired or retainer pay, from the disposable retired or retainer pay of the payor party to the payee party.

§48-2-17. Recordation of an abstract of an order for alimony, child support or separate maintenance.

(a) An order for alimony, child support, or separate maintenance shall not give rise to a lien on any real estate of the person against whom the order is entered until the procedures set forth in this section are complied with. An abstract of the order may be recorded in the office of the clerk of the county commission in the county wherein such real property is situate without constituting a lien against such real property, until the person entitled to receive such alimony, child support or separate maintenance presents for recordation with the clerk an affidavit which sets forth allegations that the person required to pay such alimony, child support or separate maintenance is in arrears in such payment for a period of not less than thirty days.

(b) Notice of the recordation of the abstract and affidavit shall be given to the person against whom the order is entered by first class mail to his or her last known address. The notice shall inform the person against whom the order is entered of his or her right to require the filing of an accounting and the right to contest the accounting, as provided for in subsection (d) of this section.

(c) The abstract of the order and the affidavit shall be recorded in the same manner as other abstracts of judgments are recorded, but shall not constitute a lien
unless both the abstract and affidavit are recorded. The abstract of judgment shall contain the name of the parties to the action in which the order of alimony, child support or separate maintenance was entered, the name of the party in whose favor such award was made, the date of the judgment and the court which rendered such judgment. In no event shall the judgment order, in its entirety, be recorded.

(d) The person against whom the order is entered may, at any time, by notice in writing, require the other party to file an accounting, in the office of the clerk of the circuit court, of the matured, unpaid installments of alimony, child support or separate maintenance alleged to be due and owing as of the date of recordation of the abstract of the order. Such accounting shall also be mailed, by first class mail, to the other party. If the party from whom the accounting is requested fails to file the accounting, within ten days after receipt of the written notice to do so, the lien created by such affidavit shall be discharged and extinguished. If the person against whom the order is entered desires to contest the accounting, then he or she shall, within fourteen days of the filing of the accounting, inform the other party in writing of the reasons that the accounting is contested and obtain a date for a hearing before the family law master. Forms for accounting and for the notices required by the provisions of this subsection shall be prescribed by the administrative office of the supreme court of appeals and made available through the office of the clerk of the circuit court. The lien created by such recording shall be effective as to the amount of any judgment rendered in such proceeding regardless of whether such judgment be for less or more than the sum contained in the accounting.

(e) The provisions of this section restricting the right of recordation of judgment orders shall not be deemed to limit the right of any person to record a judgment for a sum certain for past-due alimony, child support or separate maintenance.

§48-2-33. Disclosure of assets required.
(a) In addition to any discovery ordered by the court pursuant to rule eighty-one of the rules of civil procedure, the court may, or upon pleadings or motion of either party, the court shall, require each party to furnish, on such standard forms as the court may require, full disclosure of all assets owned in full or in part by either party separately or by the parties jointly. Such disclosure may be made by each party individually or by the parties jointly. Assets required to be disclosed shall include, but shall not be limited to, real property, savings accounts, stocks and bonds, mortgages and notes, life insurance, health insurance coverage, interest in a partnership or corporation, tangible personal property, income from employment, future interests whether vested or nonvested, and any other financial interest or source. The court may also require each party to furnish, on the same standard form, information pertaining to all debts and liabilities of the parties. The form used shall contain a statement in conspicuous print that complete disclosure of assets and debts is required by law and deliberate failure to provide complete disclosure as ordered by the court constitutes false swearing. The court may on its own initiative and shall at the request of either party require the parties to furnish copies of all state and federal income tax returns filed by them for the past two years, and may require copies of such returns for prior years.

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

(c) Information disclosed under this section shall be confidential and may not be made available to any person for any purpose other than the adjudication, appeal, modification or enforcement of judgment of an action affecting the family of the disclosing parties. The court shall include in any order compelling disclosure of assets such provisions as the court considers necessary to preserve the confidentiality of the information ordered disclosed.
(d) Upon the failure by either party timely to file a complete disclosure statement as may be required by this section, the court may accept the statement of the other party as accurate.

(e) If any party deliberately or negligently fails to disclose information which may be required by this section and in consequence thereof any asset or assets with a fair market value of five hundred dollars or more is omitted from the final distribution of property, the party aggrieved by such nondisclosure may at any time petition a court of competent jurisdiction to declare the creation of a constructive trust as to all undisclosed assets, for the benefit of the parties and their minor or dependent children, if any, with the party in whose name the assets are held declared the constructive trustee, such trust to include such terms and conditions as the court may determine. The court shall impose the trust upon a finding of a failure to disclose such assets as required under this section.

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

(g) A person who knowingly provides incorrect information or who deliberately fails to disclose information pursuant to the provisions of this section is guilty of false swearing.
CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

ARTICLE 1. GENERAL PROVISIONS.


As used in this chapter:

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

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

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

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

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

(iv) Delinquency and enforcement activities;

(B) To control, account for and monitor the collection and distribution of support payments (both interstate and intrastate), the determination, collection and distribution of incentive payments (both interstate and intrastate), and the maintenance of accounts receivable on all amounts owed, collected and distributed;

(C) To control, account for and monitor the costs of all services rendered, either directly or by exchanging information with state agencies responsible for main-
(D) To provide access to the records of the department of health and human resources or aid to families with dependent children in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program;

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

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

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

(2) "Chief judge" means the following:

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

(B) In the twenty-third and thirty-first judicial circuits, a chief judge designated by the judges thereof from among themselves by general order, to act as chief judge for both circuits for the purposes of this chapter: Provided, That if the judges cannot agree as to who shall act as chief judge, then a chief judge shall be designated for the purposes of this chapter by the supreme court of appeals; or

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

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

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

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

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

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

(8) "Domestic relations matter" means any circuit court proceeding involving child custody, child visitation, child support or alimony.

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

(10) “Employer” means any individual, sole proprietorship, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state, and any other legal entity which hires and pays an individual for his services.

(11) “Guardian of the property of a child” means a person lawfully invested with the power, and charged with the duty, of managing and controlling the estate of a child.

(12) “Income” includes, but is not limited to, the following:

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

(B) Any payment due or to be due in the future to an obligor from a profit-sharing plan, a pension plan, an insurance contract, an annuity, social security, unemployment compensation, supplemental employment benefits, workers’ compensation benefits, state lottery winnings and prizes, and overtime pay;

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

(13) “Individual entitled to support enforcement services under the provisions of this chapter” means:

(A) An individual who has applied for or is receiving services from the child advocate office and who is the custodial parent of a child, or the primary caretaker of a child, or the guardian of the property of a child when:
(i) Such child has a parent and child relationship with an obligor who is not such custodial parent, primary caretaker or guardian; and

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

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

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

(15) “Obligee” means an individual to whom a duty of support is owed, or the state of West Virginia or the department of health and human resources, if support has been assigned to the state or department.

(16) “Obligor” means a person who owes a legal duty to support another person.

(17) “Office of the children’s advocate” means the office created in section two, article three of this chapter.

(18) “Primary caretaker of a child” means a parent or other person having actual physical custody of a child without a court order granting such custody, and who has been primarily responsible for exercising parental rights and responsibilities with regard to such child.

(19) “Source of income” means an employer or successor employer or any other person who owes or will owe income to an obligor.

(20) “Support” means the payment of money including
For a child or spouse, ordered by a court of competent jurisdiction, whether the payment is ordered in an emergency, temporary, permanent or modified order, decree or judgment of such court, and the amount of unpaid support shall bear interest from the date it accrued, at a rate of ten dollars upon one hundred dollars per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time;

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

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

(21) “Support order” means any order of a court of competent jurisdiction for the payment of support, whether or not for a sum certain.

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48A-2-1. Reestablishment of the West Virginia child advocate office.

(a) There is hereby established within the department of health and human resources the child advocate office.

(b) After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares the child advocate office should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the child advocate office shall continue to exist until the first day of July, one thousand nine hundred ninety-three, so that the joint committee on government
operations may monitor compliance by the child
advocate office with the recommendations of the
performance audit.

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

(a) There shall be a director of the child advocate
office who shall be appointed by the secretary of the
department of health and human resources. The salary
of the director shall be set by the commissioner and be
paid with funds of the office. The director shall be
allowed and paid necessary expenses incident to the
performance of his or her official duties.

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

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

(d) The director shall not be a candidate for, or hold,
any other public office or public employment under the
federal government, or the government of this state or
any of its political subdivisions, or be a member or
officer of any political party committee, or serve as an
election official, or engage in any political activity, other
than to vote, in behalf of, or in opposition to, any
candidate, or political party in an election. Any violation
by the director of the provisions of this paragraph shall
be cause for removal from office.
§48A-2-6. Organization of the child advocate office.

(a) Within limits of state appropriations and federal grants and subject to provisions of state and federal laws, rules and regulations, the director shall organize the office into appropriate administrative units which shall be operationally and functionally distinct and separate from any other units or programs of the department of health and human resources so that employees of the office shall not be required to perform functions or duties of the department which are outside the scope of activities of the child advocate office as defined in this chapter. Consistent with the requirements of article six, chapter twenty-nine of this code, the director shall appoint and employ for the office such assistants and employees, as may in his or her judgment be necessary or desirable to carry out fully and in an orderly, efficient and economical manner the powers, duties and responsibilities of the office.

(b) Notwithstanding the provisions of section three and four, article six, chapter twenty-nine of this code relating to the manner in which additions are made to the list of positions in the classified service, and any other provision of this code to the contrary, the positions held by employees of the office shall be positions in the classified service except for children’s advocate, assistant children’s advocate, the director’s secretary and those positions named in subdivisions (2),(3),(4),(9) and (12), subsection (a) of said section four.

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

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

(b) The director shall annually prepare a proposed budget for the next fiscal year. Such budget shall include all sums necessary to support the activities of the child advocate office.

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

(1) Develop and recommend guidelines for the conduct, operations and procedures of the office and his or her employees, including, but not limited to, the following:

(A) Caseload and staffing standards for employees who perform investigation and recommendation functions, enforcement functions and clerical functions.

(B) Orientation programs for recipients of services of the office.

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

(D) Model pamphlets and procedural forms, which shall be distributed to each local office serving recipients of services.

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

(3) Gather and monitor relevant statistics.

(4) Develop standards and procedures for the transfer of part or all of the responsibilities for a case from one office to another in situations considered appropriate.

(5) Subject to appropriation of funds by the Legislature, install in the office of each children's advocate, adequate computer hardware and software to enable the advocate to utilize word processing and other data processing functions in the preparation of pleadings and other documents required for the proper discharge of the duties of the office.

(6) Enter into contracts and agreements with public and private institutions.

(d) The director shall appoint a nine-person advisory committee, serving without compensation except as provided in subsection (e) of this section, composed of the
(1) Three public members who are eligible for services with an office of the children's advocate;

(2) Three attorneys who are members of the West Virginia state bar with experience in domestic relations law, not more than two of whom may be employees of the department of health and human resources: Provided, That one of the attorneys appointed shall be a children's advocate selected by the children's advocates throughout the state; and

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

Of the nine members initially appointed, one public member, one attorney and one professional shall be appointed for a term of one year; one public member, one attorney and one professional shall be appointed for a term of two years; and one public member, one attorney and one professional shall be appointed for a term of three years. After the expiration of the initial terms, appointments thereafter shall be made for terms of three years. The director shall fill any vacancies resulting from death or resignation by appointment for the unexpired term. Members of the advisory council may be reappointed.

(e) The advisory committee established under subsection (d) of this section shall advise the director in the performance of his or her duties under this section. Advisory committee members shall be reimbursed for their actual expenses for mileage, meals, and, if necessary, lodging.

(f) The director shall appoint general counsel for the child advocate office to supervise and assist the children's advocates in the performance of their professional, nonadministrative duties and to promote uniformity in, and increase the quality of, legal services provided by children's advocates throughout the state. Such general counsel shall also serve as counsel to the director. A
person appointed as general counsel shall be a member in good standing of the West Virginia state bar. Compensation and expenses of the general counsel shall be fixed by the director and paid by the child advocate office. The position of general counsel shall be a position in the classified service.


(a) Upon notice by the director of the child advocate office, and except as provided in subsections (b) and (c) of this section, all employers doing business in the state of West Virginia shall report to the child advocate office:

(1) The hiring of any person who resides or works in this state to whom the employer anticipates paying earnings; and

(2) The rehiring or return to work of any employee who resides or works in this state.

(b) Employers are not required to report the hiring, rehiring or return to work of any person who:

(1) Is employed for less than one month's duration; or

(2) Is employed sporadically so that the employee will be paid for less than three hundred fifty hours during a continuous six-month period; or

(3) Has gross earnings of less than three hundred dollars per month.

(c) The director of the child advocate office may establish additional exemptions to reduce unnecessary or burdensome reporting.

(d) Employers may report by mailing to the child advocate office a copy of the employee's W-4 form, by transmitting magnetic tape in a compatible format, or by any other means mutually agreed to by the employer and by the child advocate office to achieve timely and complete reporting.

(e) Employers shall submit a report within thirty-five days of the date of the hiring, rehiring or return to work of the employee. The report shall include the employee's name, address, social security number, and date of birth.
and the employer's name and address, any different address of the payroll office and the employer's federal tax identification number.

(f) An employer of an obligor shall provide to the child advocate office, upon its written request, information regarding the obligor's employment, wages or salary, medical insurance, and location of employment. The information required under this subsection is in addition to the information required by subsection (e).

(g) An employer who fails to report in accordance with the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars.

(h) Employers required to report under this section may assess each employee so reported one dollar for the administrative costs of reporting.


(a) All state, county and municipal agencies, offices and employers receiving a request for information and assistance from the child advocate office shall cooperate with the office in the location of parents who have abandoned and deserted children and shall provide the office with all available pertinent information concerning the location, income and property of those parents.

(b) Notwithstanding any other provision of law to the contrary, any entity conducting business in this state or incorporated under the laws of this state shall, upon certification by the office that the information is needed to locate a parent for the purpose of collecting child support, provide the office with the following information about the parent: Full name, social security number, date of birth, home address, wages and number of dependents listed for income tax purposes: Provided, That no entity may provide any information obtained in the course of providing legal services, medical treatment or medical services.
§48A-3-3. Duties of the children's advocate.

Subject to the control and supervision of the director:

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

(b) In accordance with the requirements of rule 5.4(c) of the rules of professional conduct as promulgated and adopted by the supreme court of appeals, the children's advocate shall not permit a nonlawyer who is employed by the department of health and human resources in a supervisory position over the children's advocate to direct or regulate the advocate's professional judgment in rendering legal services to recipients of services in accordance with the provisions of this chapter; nor shall any nonlawyer employee of the department attempt to direct or regulate the advocate's professional judgment.

(c) The children's advocate shall make available to the public an informational pamphlet, designed in consultation with the director. The informational pamphlet shall explain the procedures of the court and the children's advocate; the duties of the children's advocate; the rights and responsibilities of the parties; and the availability of human services in the community. The informational pamphlet shall be provided as soon as possible after the filing of a complaint or other initiating pleading. Upon request, a party to a domestic relations proceeding shall receive an oral explanation of the informational pamphlet from the office of the children's advocate.

(d) The children's advocate shall act to establish the paternity of every child born out of wedlock for whom paternity has not been established, when such child's primary caretaker is an applicant for or recipient of aid to families with dependent children, and when such
primary caretaker has assigned to the division of human services any rights to support for the child which might be forthcoming from the putative father: Provided, That if the children's advocate is informed by the secretary of the department of health and human resources or his or her authorized employee that it has been determined that it is against the best interest of the child to establish paternity, the children's advocate shall decline to so act. The children's advocate, upon the request of any primary caretaker of a child born out of wedlock, regardless of whether such primary caretaker is an applicant or recipient of aid to families with dependent children, shall undertake to establish the paternity of such child.

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

(f) The children's advocate shall pursue the enforcement of support orders through the withholding from income of amounts payable as support:
(1) Without the necessity of an application from the obligee in the case of a support obligation owed to an obligee to whom services are already being provided under the provisions of this chapter; and

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

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

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

A state or county official and the clerk of any court who charges a deposit, library fee, filing fee or a fee for filing or copying documents or other service, if the filing, copying or service is for the child advocate office shall bill the child advocate office monthly.

§48A-3-10. Subpoenas.

In order to obtain financial and medical insurance information pursuant to the establishment, enforcement and modification provisions set forth in chapters forty-eight or forty-eight-a of this code, the children’s advocate may serve, by certified mail or personal service, an administrative subpoena on any person, corporation, partnership, financial institution, labor union or state agency, for an appearance or for production of financial or medical insurance information. In case of disobedience to the subpoena, the children’s advocate may invoke the aid of any circuit court in requiring the appearance or production of records and financial documents.

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

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

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

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

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

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

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

(5) There is no pending action for divorce, separate maintenance, or annulment in which the obligation of support owing from the obligor to the child is at issue.
(b) An action may be brought under the provisions of subsection (a) of this section by:

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

(2) A primary caretaker of a child;

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

(4) The department of health and human resources, or the child advocate office on its behalf, when the department is providing assistance on behalf of the child in the form of aid to families with dependent children, and an assignment of any right to support has been assigned to the department.

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

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

(e) Every order of support heretofore or hereafter entered or modified under the provisions of this section shall include a provision for the income withholding in accordance with the provisions of section fifteen-a or fifteen-b, article two, chapter forty-eight of this code.

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

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

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

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

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

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

(A) Such married woman lived separate and apart
from her husband preceding the birth of the child;

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

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

(3) Any person, including the state of West Virginia
or the department of health and human resources, or the
child advocate office on its behalf, who is not the mother
of the child, but who has physical or legal custody of
such child;

(4) The guardian or committee of such child;

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

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

(7) A man purporting to be the father of a child born
out-of-wedlock, when there has been no prior judicial
determination of paternity.

(b) A person who has sexual intercourse in this state
submits to the jurisdiction of the courts of this state for
an action brought under this article with respect to a
child who was conceived by that act of intercourse.

Service of process may be perfected according to the
rules of civil procedure.
(c) If the person against whom the action is brought has failed to plead or otherwise defend the action after proper service has been obtained, judgment by default may be issued by the court as provided by the rules of civil procedure.

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

(a) The court may, on its own motion, or shall upon the motion of any party, order the mother, her child and the man to submit to blood tests or tissue tests to aid the court in proving or disproving paternity. Such motion may be made, upon ten days' written notice to the mother and alleged father, without the necessity of filing a complaint. If such tests are ordered, the court shall direct that the inherited characteristics, including, but not limited to, blood types, be determined by appropriate testing procedures at a hospital, independent medical institution or independent medical laboratory, duly licensed under the laws of this state, or any other state, and shall appoint an expert qualified as an examiner of genetic markers to analyze and interpret the results and to report to the court. The court shall consider the results as follows:

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

(2) Blood or tissue test results which show a statistical probability of paternity of less than ninety-eight percent are admissible and shall be weighed along with other evidence of the defendant's paternity.

(3) Undisputed blood or tissue test results which show a statistical probability of paternity of more than ninety-eight percent shall, when filed with the court, legally establish the man as the father of the child for all purposes and child support may be established pursuant to the provisions of this chapter.

(4) If the defendant desires to challenge the results of
the blood or tissue tests or the expert's analysis of
inherited characteristics, he shall file a written protest
within thirty days of the filing of such test results, and
serve a copy of such protest upon the other party. The
court, upon reasonable request of a party, shall order
that additional tests be made by the same laboratory or
another laboratory within thirty days of the entry of
such order, at the expense of the party requesting
additional testing. If the results of the blood or tissue
tests or the expert's analysis which show a statistical
probability of paternity of more than ninety-eight
percent are confirmed by the additional testing, then
such results are admissible evidence which is clear and
convincing evidence of paternity. The admission of such
evidence creates a presumption that the defendant is the
father.

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

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-29. Failure to meet an obligation to provide support
to a minor; penalties.

(1) A person who (a) persistently fails to provide
support which he or she can reasonably provide and
which he or she knows he or she has a duty to provide
to a minor; or (b) is subject to court order to pay any
amount for the support of a minor child and is delin-
quent in meeting the full obligation established by such
order and has been so delinquent for a period of at least
six months duration, is guilty of a misdemeanor, and,
upon conviction thereof, shall be fined not less than one
hundred dollars nor more than one thousand dollars, or
imprisoned in the county jail for not more than one year,
or both fined and imprisoned.
(2) A person who persistently fails to provide support which he or she can reasonably provide and which he or she knows he or she has a duty to provide to a minor by virtue of a court or administrative order and the failure results in (a) an arrearage of not less than ten thousand dollars; or (b) twelve consecutive months without payment of support, is guilty of a felony, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned for not less than one year nor more than three years, or both fined and imprisoned.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James New
Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originating in the House.
Takes effect from passage.

Barbara Smith
Clerk of the Senate

Donald A. Kee
Clerk of the House of Delegates

Kurt Bondurant
President of the Senate

Robert C. Corch
Speaker of the House of Delegates

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

Martin O'Malley
Governor