WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1994

ENROLLED

SENATE BILL NO. 1007

(By Senator Jones, et al.)

PASSED March 18, 1994
In Effect 90 days from Passage
ENROLLED

Senate Bill No. 1007

(By Senators Jones, Plymale, Burdette, Mr. President, Chernenko, Anderson, Bailey, Humphreys, Dittmar, Blatnik, Walker, Tomblin, Wehrle, Miller, Minard, Dalton, Wagner, Whitlow, Wooton, Manchin, Grubb, Holliday, Yoder, Craigo, Boley, Lucht, Schoonover, Ross, Withers, Helmick and Sharpe)

[Passed March 18, 1994; in effect ninety days from passage]

AN ACT to amend article six, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a; to amend and reenact section nine, article six-a of said chapter; to amend and reenact section twenty-four, article seven of said chapter; to amend and reenact section three, article eleven-a, chapter sixty-one of said code; and to amend and reenact sections seven and seven-a, article twelve, chapter sixty-two of said code, all relating to establishing a plan for achieving national caseload standards for child protective service workers by the year one thousand nine hundred ninety-five; prohibiting restrictions on investigations and available services;
required face-to-face interviews of certain abused minors; referrals from circuit courts and family law masters; promulgation of rules and protocol for law enforcement in child abuse cases; promulgation of legislative rules; allowing statement of certain therapists in presentence reports; and providing for presentence diagnosis and treatment of certain offenders.

Be it enacted by the Legislature of West Virginia:

That article six, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one-a; that section nine, article six-a of said chapter be amended and reenacted; that section twenty-four, article seven of said chapter be amended and reenacted; that section three, article eleven-a, chapter sixty-one of said code be amended and reenacted; and that sections seven and seven-a, article twelve, chapter sixty-two of said code be amended and reenacted, all to read as follows:

CHAPTER 49. CHILD WELFARE.

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

§49-6-1a. Minimum staffing complement for child protective services.

1 For the sole purpose of increasing the number of full time front line child protective service case workers and investigators, the secretary of the department of health and human resources shall have the authority to transfer funds between all general revenue accounts under the secretary's authority and/or between personnel and nonpersonnel lines within each account under the secretary's authority: Provided, That nothing in this section shall be construed to require the department to hire additional child protective service workers at any time if the department determines that funds are not available for such workers. Additionally, the secretary shall prepare a plan to allow the department to progressively reduce caseload standards in West Virginia for child protective services workers, which if adopted
by the Legislature during the regular session of the year one thousand nine hundred ninety-five, shall require implementation no later that the first day of July, one thousand nine hundred ninety-six, with said plan to be submitted to the joint committee on government and finance by the thirtieth day of September, one thousand nine hundred ninety-four, and a final report to be submitted to the Legislature by the first day of January, one thousand nine hundred ninety-five.

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

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

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

(b) The local child protective service shall investigate all reports of child abuse or neglect. Provided, That under no circumstances shall investigating personnel be relatives of the accused, the child or the families involved. In accordance with the local plan for child protective services, it shall provide protective services to prevent further abuse or neglect of children and provide for or arrange for and coordinate and monitor the provision of those services necessary to ensure the safety of children. The local child protective service shall be organized to maximize the continuity of responsibility, care and service of individual workers for individual children and families: Provided, however, That under no circumstances may the secretary or his or her designee promulgate rules or establish any policy which restricts the scope or types of alleged abuse or neglect of minor children which are to be investigated or the provision of appropriate and available services.

Each local child protective service office shall:

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

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

(3) Upon notification of suspected child abuse or neglect, commence or cause to be commenced a thorough investigation of the report and the child's environment. As a part of this response, within fourteen days, there shall be: A face-to-face interview with the child or children, and the development of a protection plan, if necessary for the safety or health of the child, which may involve law-enforcement officers or the court;

(4) Respond immediately to all allegations of imminent danger to the physical well-being of the child or of serious physical abuse. As a part of this response, within seventy-two hours, there shall be: A face-to-face interview with the child or children; and the development of a protection plan which may involve law-enforcement officers or the court; and

(5) In addition to any other requirements imposed by this section, when any matter regarding child custody is pending, the circuit court or family law master may refer allegations of child abuse and neglect to the local child protective service for investigation of the allegations as defined by this chapter and require the local child protective service to submit a written report of the investigation to the referring circuit court or family law master within the time frames set forth by the circuit court or family law master.

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

(d) The local child protective service shall be responsible for providing, directing or coordinating the appropriate and timely delivery of services to any child suspected or known to be abused or neglected, including services to the child's family and those responsible for the child's care.

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

ARTICLE 7. GENERAL PROVISIONS.
§49-7-24. Rules and regulations under chapter.

1 The secretary of the department of health and human resources shall propose for promulgation legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to implement the provisions of this chapter.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.
§61-11A-3. Victim impact statement; when required; contents; use; right of defendant to review and present evidence.

1 (a) In every case in which a presentence report is ordered by the court, such presentence report shall contain a victim impact statement unless the court orders otherwise, if the defendant, in committing a felony or misdemeanor, caused physical, psychological or economic injury or death of the victim.

(b) The victim impact statement shall be prepared by the probation officer and shall include the identity of the
victim, an itemization of any economic loss suffered by
the victim as a result of the offense, a description of the
nature and extent of any physical or psychological injury
suffered by the victim as a result of the offense, the
details of any change in the victim's personal welfare,
lifestyle or family relationships as a result of the offense,
whether there has been any request for psychological or
medical services initiated by the victim or the victim's
family as a result of the offense and such other informa-
tion related to the impact of the offense upon the victim
as may be required by the court.

(c) If the court does not order a presentence investiga-
tion and report, the prosecuting attorney may request
that the probation officer prepare a victim impact
statement. The victim impact statement shall be
considered by the court as a factor in determining the
appropriate sentence. Additionally, the statement may
be utilized for the determination of claims by victims of
crimes pursuant to the provisions of article two-a,
chapter fourteen of this code.

(d) In cases that involve child victims of offenses
defined in section twelve, article eight of this chapter or
article eight-b or eight-d of this chapter, any victim
impact statement in a presentence report may include a
statement from a therapist, psychologist or physician
who is providing treatment to the child as to the
recommendations regarding the effect that possible
disposition may have on the child.

(e) A victim impact statement prepared in accordance
with the provisions of this section, other than for claims
by victims of crimes pursuant to the provisions of article
two-a, chapter fourteen of this code, shall be made
available to the defendant, and his counsel if he is so
represented, at least ten days prior to the date set for
pronouncement of his sentence. The court shall, upon
motion by or on behalf of the defendant, grant the
defendant a hearing, whereby he may introduce
testimony or other information related to any alleged
CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.


When directed by the court, the probation officer shall make a careful investigation of, and a written report with recommendations concerning, any prospective probationer. Insofar as practicable this report shall include information concerning the offender’s court and criminal record, occupation, family background, education, habits and associations, mental and physical condition, the names, relationship, ages and condition of those dependent upon him for support and such other facts as may aid the court in determining the propriety and conditions of his release on probation. No person convicted of a felony or of any offense described in article eight-b or eight-d, chapter sixty-one of this code against a minor child may be released on probation until this report shall have been presented to and considered by the court. The court may in its discretion request such a report concerning any person convicted of a misdemeanor. The presentence report of any person convicted of an offense, described in said articles or section twelve, article eight of said chapter, may include a statement from a therapist, psychologist or physician who is providing treatment to the child. A copy of all reports shall be filed with the board of probation and parole.

§62-12-7a. Presentence diagnosis and classification; power of court; custody of convicted person; provision for presentence reports; penalty for escape.

Notwithstanding any other provision of law, when any person has been found guilty of, or pleads guilty to, a felony, or any offense described in article eight-d or eight-b, chapter sixty-one of this code, against a minor child, the court may, prior to pronouncing of sentence, direct that the person be delivered into the custody of
the commissioner of corrections, for the purpose of
diagnosis and classification for a period not to exceed
sixty days: Provided, That the court shall require that a
presentence report be completed by the probation officer
assigned to that person and be made available to the
commissioner of corrections prior to delivery of the
person to a statutorily approved diagnosis and classifica-
tion unit of the division of corrections. While at the
diagnosis and classification unit the person shall
undergo examination, diagnosis and classification and
shall then be remanded and delivered to the custody of
the sheriff of the county wherein he or she was found
guilty or entered such plea. Within ten days following
the termination of the examination, diagnosis and
classification, the commissioner of corrections shall
make or cause to be made a report to the court wherein
the person was found guilty, or entered a plea of guilty,
containing the results, findings, conclusions and
recommendations of the commissioner with respect to
such person.

Whenever a person is remanded into the custody of the
commissioner of corrections pursuant to this section, the
person shall be given credit on any sentence subse-
quently imposed by the court equal to the time spent in
such custody.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 15th day of April 1994.

Governor