

SB 1020

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WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1994



ENROLLED

SENATE BILL NO. 1020

(By Senator Wooton, et al)



PASSED March 18, 1994

In Effect 90 days from Passage

E N R O L L E D

Senate Bill No. 1020

(BY SENATORS WOOTON, ANDERSON, MACNAUGHTAN,
PLYMALE, CLAYPOLE, HOLLIDAY, MILLER, MINARD,
ROSS, WAGNER, WIEDEBUSCH AND DITTMAR)

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

AN ACT to repeal section seven, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, five, six, nine and ten, article two-a of said chapter; to further amend said article by adding thereto four new sections, designated sections ten-a, ten-b, ten-c and ten-d; to amend and reenact section fifteen, article two-c of said chapter; to amend and reenact section three, article one, chapter forty-nine of said code; to amend and reenact section eleven, article six of said chapter; to amend and reenact sections two and five, article six-a of said chapter; to amend and reenact sections twelve and thirteen, article eight, chapter sixty-one of said code; to amend and reenact section eleven-a, article eight-b of said chapter; to amend and reenact section nine, article eight-d of said chapter; to amend and reenact section seventeen-a, article one-c, chapter sixty-two of said code; to amend and reenact section one, article eleven-a of said chapter; and to amend and reenact section nine, article twelve of said chapter, all relating to

domestic relations generally; making certain technical corrections to correct clerical errors and incorrect references; redefining certain terms relating to family violence; service of all protective orders by publication; continuance of hearings on temporary orders; prior reports of domestic violence to law-enforcement agencies; purging and sealing of files containing protective orders; filing of protective orders with law enforcement; civil and criminal penalties for violation of protective orders; correcting references to domestic violence records deemed confidential; defining serious physical abuse of a child and clarifying references thereto; defining sibling; deleting requirement that documentation of certain instances of abuse and neglect be provided within three days; referencing child abuse and neglect provisions for parents guilty of incest; further making technical corrections to section references; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.

§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:

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

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

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

13 (4) Committing either sexual assault or sexual abuse as
14 those terms are defined in articles eight-b and eight-d,
15 chapter sixty-one of this code; and

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

18 (b) “Family or household member” means current or
19 former spouses, persons living as spouses, persons who
20 formerly resided as spouses, parents, children and
21 stepchildren, current or former sexual or intimate
22 partners, other persons related by blood or marriage,
23 persons who are presently or in the past have resided or
24 cohabited together or a person with whom the victim has
25 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 in
6 which the abuse occurred or in the county in which the
7 respondent is living. If the parties are married, the action
8 may also be brought in the county in which an action for
9 divorce between the parties may be brought as provided
10 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 immedi-
18 ately upon filing. Any appeal to the circuit court of a
19 magistrate's judgment on a petition for the relief under
20 this article shall be heard within ten working days of the
21 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 shall
26 be accorded full faith and credit and enforced as if it
27 were an order of this state if its terms and conditions are
28 substantially similar to those which may be imposed by
29 a court of this state.

30 (f) *Service by publication*. — A protective order may be
31 served on the respondent by means of a Class I legal
32 advertisement published notice, with the publication
33 area being the county in which the respondent resides,
34 published in accordance with the provisions of section
35 two, article three, chapter fifty-nine of this code if: (i)
36 The petitioner files an affidavit with the court stating
37 that an attempt at personal service pursuant to rule four
38 of the West Virginia rules of civil procedure has been
39 unsuccessful or evidence is adduced at the hearing for

40 the protective order that the respondent has left the state
41 of West Virginia; and (ii) a copy of the order is mailed by
42 certified or registered mail to the respondent at the
43 respondent's last known residence and returned
44 undelivered.

§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 this subsection.
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 of
24 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 effective
32 until such time as a hearing is held. The order shall be in

33 full force and effect in every county in this state.

34 (b) Within five days following the issuance of the
35 court's temporary order, a full hearing shall be held at
36 which the petitioner must prove the allegation of abuse
37 by a preponderance of the evidence or such petition shall
38 be dismissed. If the respondent has not been served with
39 notice of the temporary order, the hearing may be
40 continued in order to permit service to be effected. The
41 failure to obtain service upon the respondent does not
42 constitute a basis upon whether the petition may be
43 dismissed. Copies of medical reports may be admitted
44 into evidence to the same extent as though the original
45 thereof, upon proper authentication, by the custodian of
46 such records.

47 (c) No person requested by a party to be present during
48 a hearing held under the provisions of this article shall
49 be precluded from being present unless such person is to
50 be a witness in the proceeding and a motion for
51 sequestration has been made and such motion has been
52 granted. A person found by the court to be disruptive
53 may be precluded from being present.

54 (d) If a hearing is continued, the court may make or
55 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 terms of temporary visitation with
14 regard to the minor children including, but not limited
15 to, requiring third party supervision of visitations if
16 necessary to protect the petitioner and/or the minor
17 children;

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

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

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

28 (7) Directing the respondent to participate in counsel-
29 ing; or

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

33 (b) Any final protective order shall be for a fixed
34 period of time not to exceed ninety days except as
35 otherwise provided by subsection (d), section three-a of
36 this article. The court may amend its order at any time
37 upon subsequent petition filed by either party. If the
38 court enters an initial order for a period of less than
39 ninety days, it shall, after notice and hearing, extend its
40 initial order for the full ninety-day period if it finds the
41 petitioner or the minor child or children continue to need
42 protection from abuse. The order shall be in full force
43 and effect in every county in this state. The order shall
44 state that it is in full force and effect in every county in
45 this state.

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

48 (d) Certified copies of any order made under the

49 provisions of this section shall be issued to the peti-
50 tioner, the respondent and any law-enforcement agency
51 having jurisdiction to enforce the order, including the
52 city police, the county sheriff's office or local office of
53 the division of public safety within twenty-four hours of
54 the entry of the order.

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

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

1 (a) Notwithstanding any other provision of this code to
2 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 or
22 victims, to a shelter or the appropriate court where there
23 is reasonable cause to believe that such victim or victims
24 have suffered or are likely to suffer physical injury.

25 (d) Each law-enforcement agency shall maintain
26 records on all incidents of family or household abuse

27 reported to it and shall monthly make and deliver to the
28 department of public safety a report on a form pre-
29 scribed by the department, listing all such incidents of
30 family or household abuse. Such reports shall include:

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

32 (2) The relationship between the parties;

33 (3) The type and extent of abuse;

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

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

39 (6) Whether any prior reports have been made, received
40 or filed regarding family or household abuse on any prior
41 occasion and if so, the number of such prior reports; and

42 (7) The effective dates and terms of any protective
43 order issued prior to or following the incident to protect
44 the abused party: *Provided*, That no information which
45 will permit the identification of the parties involved in
46 any incident of abuse shall be included in such report.

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

55 (1) The number of family violence complaints received;

56 (2) The number of complaints investigated;

57 (3) The number of complaints received from alleged
58 victims of each sex;

59 (4) The average time lapse in responding to such
60 complaints;

61 (5) The number of complaints received from alleged
62 victims who have filed such complaints on prior
63 occasions;

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

66 (7) The type of police action taken in disposition of the
67 cases; and

68 (8) The number of alleged violations of protective
69 orders.

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

78 (g) The governor's committee on crime, delinquency
79 and correction shall develop and promulgate rules for
80 state, county and municipal law-enforcement officers
81 and law-enforcement agencies with regard to domestic
82 violence. The notice of the public hearing on the rules
83 shall be published before the first day of July, one
84 thousand nine hundred ninety-one. Prior to the
85 publication of the proposed rules, the governor's
86 committee on crime, delinquency and correction shall
87 convene a meeting or meetings of an advisory committee
88 to assist in the development of the rules. The advisory
89 committee shall be composed of persons invited by the
90 committee to represent state, county and local law-
91 enforcement agencies and officers, to represent
92 magistrates and court officials, to represent victims of
93 domestic violence, to represent shelters receiving
94 funding pursuant to article two-c of this chapter and to
95 represent other persons or organizations who, in the
96 discretion of the committee, have an interest in the rules.
97 The rules and the revisions thereof as provided in this

98 section shall be promulgated as legislative rules in
99 accordance with chapter twenty-nine-a of this code.
100 Following the promulgation of said rules, the committee
101 shall meet at least annually to review the rules and to
102 propose revisions as a result of changes in law or policy.

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

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

117 (j) Two years after the entry of a final protective order,
118 the circuit court, may, upon motion, order that the
119 protective order and references to the order be purged
120 from the file maintained by any law-enforcement agency
121 and may further order that the file maintained by the
122 court be sealed and not opened except upon order of the
123 court when such is in the interest of justice.

§48-2A-10. Filing of orders with law-enforcement agency.

1 Upon entry of an order pursuant to section five or six
2 of this article, or an order entered pursuant to section
3 thirteen, article two of this chapter granting relief
4 provided for by this article, a copy of such order shall, no
5 later than the close of the next business day, be trans-
6 mitted by the court or the clerk of the court to a local
7 office of the city police, the county sheriff and the West
8 Virginia division of public safety, where it shall be
9 placed in a confidential file, with access provided only to
10 the law-enforcement agency and the respondent named

11 on said order. A sworn affidavit may be executed by the
12 party awarded exclusive possession of the residence or
13 household, pursuant to an order entered under subsec-
14 tion (b), section six of this article, and delivered to such
15 law-enforcement agency simultaneously with any such
16 order, giving his or her consent for a law-enforcement
17 officer to enter such residence or household, without a
18 warrant, to enforce such protective order or temporary
19 order. Orders shall be promptly served upon the
20 respondent. Failure to serve shall not stay the effect of a
21 valid order if the respondent has actual notice of the
22 existence and contents of the order.

**§48-2A-10a. Civil contempt; violation of protective orders;
order to show cause.**

1 (a) Any person authorized to file a petition under the
2 provisions of section four of this article or a legal
3 guardian or guardian ad litem may file a petition for
4 civil contempt alleging a violation of an order issued
5 pursuant to the provisions of this article. Such petition
6 shall be filed in a court in the county in which the
7 violation occurred or the county in which the order was
8 issued.

9 (b) When a petition for an order to show cause is filed,
10 a hearing on the petition shall be held within five days
11 from the filing of the petition. Any order to show cause
12 which is issued shall be served upon the respondent.

13 (c) Upon a finding of contempt, the court may order the
14 respondent to comply with specific provisions of the
15 protective order and post a bond as surety for faithful
16 compliance with such order.

**§48-2A-10b. Violations of protective orders; criminal com-
plaints.**

1 (a) When a respondent abuses the petitioner and/or
2 minor children or is physically present at any location in
3 knowing and willful violation of the terms of a tempo-
4 rary or final protective order issued under the provisions
5 of this article, any person authorized to file a petition

6 pursuant to the provisions of section four of this article
7 or the legal guardian or guardian ad litem may file a
8 petition for civil contempt as set forth in section ten-a of
9 this article.

10 (b) When any such violation of a valid order has
11 occurred, the petitioner may file a criminal complaint. If
12 the court finds probable cause upon the complaint, the
13 court shall issue a warrant for arrest of the person
14 charged.

§48-2A-10c. Arrest for violations of protective orders.

1 (a) When a law-enforcement officer observes any
2 respondent abuse the petitioner and/or minor children or
3 the respondent's physical presence at any location in
4 knowing and willful violation of the terms of a tempo-
5 rary or final protective order issued under the provisions
6 of this article, he or she shall immediately arrest the
7 respondent.

8 (b) Any person who observes a violation of a protective
9 order as described in this section, or the victim of such
10 abuse or unlawful presence, may call a local law-
11 enforcement agency, which shall verify the existence of
12 a current order, and shall direct a law-enforcement
13 officer to promptly investigate the alleged violation.

14 (c) Where there is an arrest, the officer shall take the
15 arrested person before a court or a magistrate and, upon
16 a finding of probable cause to believe a violation of an
17 order as set forth in this section has occurred, the court
18 or magistrate shall set a time and place for a hearing in
19 accordance with the West Virginia rules of criminal
20 procedure.

§48-2A-10d. Misdemeanor offense of violation of protective order.

1 A respondent who abuses the petitioner and/or minor
2 children or who is physically present at any location in
3 knowing and willful violation of the terms of a tempo-
4 rary or final protective order issued under the provisions

5 of this article shall be guilty of a misdemeanor, and,
6 upon conviction thereof, shall be confined in the county
7 or regional jail for a period of not less than one day nor
8 more than one year, which jail term shall include actual
9 confinement of not less than twenty-four hours, and
10 shall be fined not less than two hundred fifty dollars or
11 more than two thousand dollars.

ARTICLE 2C. DOMESTIC VIOLENCE ACT.

§48-2C-15. Confidentiality.

1 (a) No program or shelter receiving funds pursuant to
2 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 article six,
10 chapter forty-nine of this code;

11 (3) As mandated by article six-a, chapter forty-nine
12 and article six, chapter nine of this code;

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

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

20 (6) For treatment or internal review purposes to the
21 staff of any program or shelter if the client is also being
22 cared for by other health professionals in the program or
23 shelter.

24 (b) No consent or authorization for the transmission or
25 disclosure of confidential information shall be effective
26 unless it is in writing and signed by the client. Every

27 person signing an authorization shall be given a copy.

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 may
13 include an injury to the child as a result of excessive
14 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 of
24 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 lead
37 to a removal of children and a breakup of the family;

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

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

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

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

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

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

61 (3) Nutritional deprivation; or

62 (4) Abandonment by the parent, guardian or custodian;
63 or

64 (5) Inadequate treatment of serious illness or disease;

65 or

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

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

70 (f) "Multidisciplinary team" means a group of
71 professionals and paraprofessionals representing a
72 variety of disciplines who interact and coordinate their
73 efforts to identify, diagnose and treat specific cases of
74 child abuse and neglect. Multidisciplinary teams may
75 include, but are not limited to, medical, child care and
76 law-enforcement personnel, social workers, psycholo-
77 gists and psychiatrists. Their goal is to pool their
78 respective skills in order to formulate accurate diagnoses
79 and to provide comprehensive coordinated treatment
80 with continuity and follow-up for both parents and
81 children. "Community team" means a multidisciplinary
82 group which addresses the general problem of child
83 abuse and neglect in a given community and may consist
84 of several multidisciplinary teams with different
85 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 the
89 child's parent, guardian or custodian to supply the child
90 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 means
93 on the part of the parent, guardian or custodian; or

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;

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

152 (l) "Sexual intercourse" means sexual intercourse as
153 that term is defined in section one, article eight-b,
154 chapter sixty-one of this code.

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

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

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

167 (p) "Serious physical abuse" means bodily injury
168 which creates a substantial risk of death, which causes
169 serious or prolonged disfigurement, prolonged impair-
170 ment of health or prolonged loss or impairment of the
171 function of any bodily organ.

172 (q) "Siblings" means children who have at least one
173 biological parent in common or who have been legally
174 adopted by the same parents or parent.

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

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

1 In any case where a person is convicted of an offense,
2 described in section twelve, article eight, chapter sixty-
3 one of this code; and articles eight-b and eight-d of said
4 chapter; against any child and further has custodial,
5 visitation or other parental rights to the child, at the
6 time of sentencing, the court shall make a finding that
7 the person is an abusing parent within the meaning of
8 this article and the court shall take such further steps as
9 are 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 suffered serious physical abuse or
16 sexual abuse or sexual assault, the reporter shall also
17 immediately report, or cause a report to be made to the
18 division of public safety and any law-enforcement
19 agency having jurisdiction to investigate the complaint:
20 *Provided, however*, That any person required to report

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

28 In addition to those persons and officials specifically
29 required to report situations involving suspected abuse
30 or neglect of children, any other person may make a
31 report if such person has reasonable cause to suspect
32 that a child has been abused or neglected in a home or
33 institution or observes the child being subjected to
34 conditions or circumstances that would reasonably result
35 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 abuse, sexual
11 abuse or assault shall be forwarded by the department to
12 the appropriate law-enforcement agency, the prosecut-
13 ing attorney or the coroner or medical examiner's office.
14 All reports under this article shall be confidential and
15 unless there are pending proceedings with regard thereto
16 shall be destroyed six years following their preparation.
17 Reports of known or suspected institutional child abuse
18 or neglect shall be made and received as all other reports
19 made pursuant to this article.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-12. Incest; penalty.

- 1 (a) For the purposes of this section:
- 2 (1) "Aunt" means the sister of a person's mother or
3 father;
- 4 (2) "Brother" means the son of a person's mother or
5 father;
- 6 (3) "Daughter" means a person's natural daughter,
7 adoptive daughter or the daughter of a person's husband
8 or wife;
- 9 (4) "Father" means a person's natural father, adoptive
10 father or the husband of a person's mother;
- 11 (5) "Granddaughter" means the daughter of a person's
12 son or daughter;
- 13 (6) "Grandfather" means the father of a person's father
14 or mother;
- 15 (7) "Grandmother" means the mother of a person's
16 father or mother;
- 17 (8) "Grandson" means the son of a person's son or
18 daughter;
- 19 (9) "Mother" means a person's natural mother,
20 adoptive mother or the wife of a person's father;
- 21 (10) "Niece" means the daughter of a person's brother
22 or sister;
- 23 (11) "Nephew" means the son of a person's brother or
24 sister;
- 25 (12) "Sexual intercourse" means any act between
26 persons involving penetration, however slight, of the
27 female sex organ by the male sex organ or involving
28 contact between the sex organs of one person and the
29 mouth or anus of another person;
- 30 (13) "Sexual intrusion" means any act between persons
31 involving penetration, however slight, of the female sex
32 organ or of the anus of any person by an object for the

33 purpose of degrading or humiliating the person so
34 penetrated or for gratifying the sexual desire of either
35 party;

36 (14) "Sister" means the daughter of a person's father or
37 mother;

38 (15) "Son" means a person's natural son, adoptive son
39 or the son of a person's husband or wife; and

40 (16) "Uncle" means the brother of a person's father or
41 mother.

42 (b) A person is guilty of incest when such person
43 engages in sexual intercourse or sexual intrusion with
44 his or her father, mother, brother, sister, daughter, son,
45 grandfather, grandmother, grandson, granddaughter,
46 nephew, niece, uncle or aunt.

47 (c) Any person who violates the provisions of this
48 section shall be guilty of a felony, and, upon conviction
49 thereof, shall be imprisoned in the penitentiary not less
50 than five years nor more than fifteen years, or fined not
51 less than five hundred dollars nor more than five
52 thousand dollars and imprisoned in the penitentiary not
53 less than five years nor more than fifteen years.

54 (d) In addition to any penalty provided under this
55 section and any restitution which may be ordered by the
56 court under article eleven-a of this chapter, the court
57 may order any person convicted under the provisions of
58 this section where the victim is a minor to pay all or any
59 portion of the cost of medical, psychological or psychiat-
60 ric treatment of the victim, the need for which results
61 from the act or acts for which the person is convicted,
62 whether or not the victim is considered to have sustained
63 bodily injury.

64 (e) In any case where a person is convicted of an
65 offense described herein against a child and further has
66 or may have custodial, visitation or other parental rights
67 to the child, the court shall find that the person is an
68 abusing parent within the meaning of article six, chapter

69 forty-nine of this code, and shall take such further action
70 in accord with the provisions of said article.

**§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 the
9 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 testify-
14 ing.

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 in
35 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.

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 article six, chapter
6 forty-nine of this code, and shall take such further action
7 in accord with the provisions of said article.

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 article six, chapter
6 forty-nine of this code and shall take such further action
7 in accord with the provisions of said article.

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 offense defined in
2 article eight-d, chapter sixty-one of this code, it shall be
3 a condition of bond that the defendant shall not live in
4 the same residence as and shall have no contact with the
5 victim of the alleged offense and the court may make
6 such other conditions of bond with respect to contact
7 with the victim as it deems necessary under the
8 circumstances to protect the child: *Provided*, That the
9 requirement of no contact with the victim of the alleged

10 offense and all other conditions of bond may be reviewed
11 by summary petition from the magistrate court to the
12 circuit court or from the circuit court to the supreme
13 court of appeals or any justice thereof.

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

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 a
2 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 or
15 ordered by the court, including participation in the litter
16 control program of the county unless the court specifi-
17 cally 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 renew
26 his petition in the discretion of the court. The court may
27 withdraw the privilege at any time by order entered with
28 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 in
33 making certain that employment already obtained is
34 suitable. Employment shall not be deemed suitable if the
35 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 of
45 attachment or execution or in other lawful manner shall
46 be collected from the employer and shall not be collected
47 hereunder, but when the clerk has requested transmittal
48 of earnings prior to levy, such request shall have
49 priority. When an employer transmits such earnings to
50 the clerk pursuant to this subsection he shall have no
51 liability to the inmate for such earnings. From such
52 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 clerk
61 may, with the consent of the inmate, pay, in whole or in
62 part, any unpaid debts of the inmate. Any balance shall
63 be retained and shall be paid to the inmate at the time of
64 his discharge.

65 (6) An inmate who is serving his sentence pursuant to
66 this section shall be eligible for a reduction of his term
67 for good behavior and faithful performance of duties in
68 the same manner as if he had served his term in ordinary
69 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 twelve, article
77 eight, chapter sixty-one, or in article eight-b or eight-d
78 of said chapter against a child, the defendant shall not
79 live in the same residence as any minor child, nor
80 exercise visitation with any minor child and shall have
81 no contact with the victim of the offense: *Provided*, That
82 the defendant may petition the court of the circuit
83 wherein he was so convicted for a modification of this
84 term and condition of this probation and the burden
85 shall rest upon the defendant to demonstrate that a
86 modification is in the best interest of the child.

ARTICLE 12. PROBATION AND PAROLE.

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

1 (a) 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 regulations
10 prescribed by the court or by the board of probation and
11 parole, as the case may be, for his supervision by the
12 probation officer.

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

25 (5) That the probationer be required to pay a fee, based
26 upon his or her ability to pay, not to exceed twenty
27 dollars per month to defray costs of supervision. All
28 moneys collected as fees from probationers shall be
29 deposited with the circuit clerk who shall, on a monthly
30 basis, remit said moneys collected to the state treasurer
31 for deposit in the state general revenue fund.

32 (b) In addition the court may impose, subject to
33 modification at any time, any other conditions which it
34 may deem advisable, including, but not limited to, any of
35 the following:

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

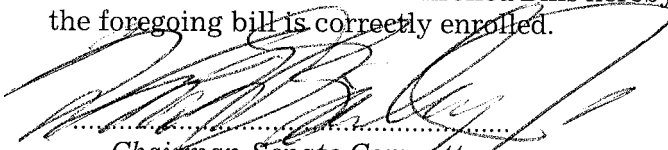
40 (2) That he shall pay any fine assessed and the costs of
41 the proceeding in such installments as the court may
42 direct.

43 (3) That he shall make contribution from his earnings,

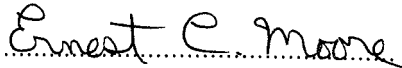
44 in such sums as the court may direct, for the support of
45 his dependents.

46 (4) That he shall, in the discretion of the court, be
47 required to serve a period of confinement in the county
48 jail of the county in which he was convicted for a period
49 not to exceed one third of the minimum sentence
50 established by law or one third of the least possible
51 period of confinement in an indeterminate sentence, but
52 in no case shall such period of confinement exceed six
53 consecutive months. The court shall have authority to
54 sentence the defendant within such six-month period to
55 intermittent periods of confinement including, but not
56 limited to, weekends or holidays and may grant unto the
57 defendant intermittent periods of release in order that he
58 may work at his employment or for such other reasons or
59 purposes as the court may deem appropriate: *Provided,*
60 That the provisions of article eleven-a of this chapter
61 shall not apply to such intermittent periods of confine-
62 ment and release except to the extent that the court may
63 direct. If a period of confinement is required as a
64 condition of probation, the court shall make special
65 findings that other conditions of probation are inade-
66 quate and that a period of confinement is necessary.

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



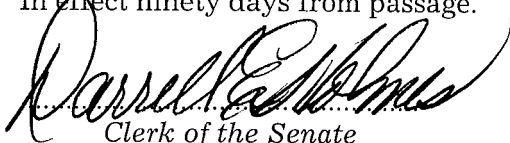
Chairman Senate Committee



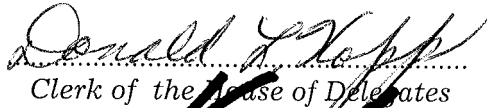
Chairman House Committee

Originated in the Senate.

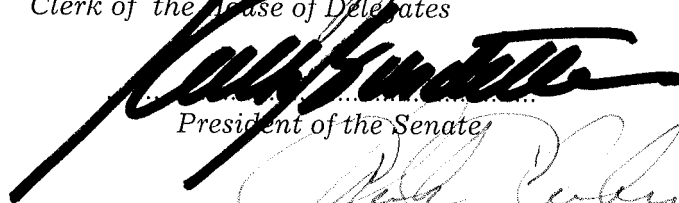
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

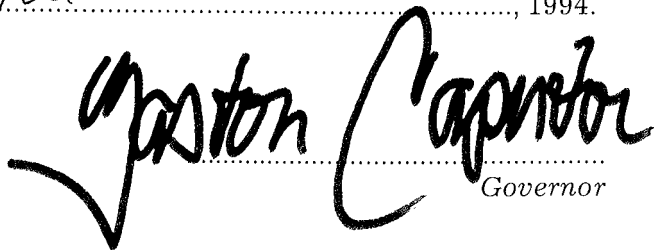


President of the Senate



Speaker House of Delegates

The within *is approved* this the *ten* day of *April*, 1994.



Governor

PRESENTED TO THE

GOVERNOR

Date 11/5/94

Time 1:38 pm