

## REGULAR SESSION, 1996

Passed March 9, 1996  
In Effect Ninety Days From Passage

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 4138**

(BY DELEGATES DOUGLAS AND GIVENS)

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[Passed March 9, 1996; in effect ninety days from passage.]

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AN ACT to amend and reenact section one and three, article five-d, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, five and eleven, article six of said chapter; to further amend said article by adding thereto a new section, designated section twelve; to amend and reenact section three, article six-d of said chapter; to amend and reenact section eleven-a, article eight-b, chapter sixty-one of said code; and to amend and reenact section nine, article eight-d of said chapter, all relating to abuse and neglect of children; restricting requirement of meetings for certain cases; requiring that prior to temporary custody person found to be fit to receive custody; requiring that hearing be held within sixty days of expiration of improvement period; changing provisions relating to length and terms of improvement period; requiring respondent to move for improvement period and restricting the ability of the court to grant an improvement period prior to finding that child is abused or neglected; limiting length of improvement period; requiring release of information; termination of improvement period; extension of improvement period; family case plans; and convictions for offenses against children to require adjudication of status as abusing parent.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 5D. MULTIDISCIPLINARY TEAMS.**

**§49-5D-1. Purpose; additional cases and teams.**

1 (a) The purpose of this article is to provide a system  
2 for evaluation of and coordinated service delivery for  
3 children who may be victims of abuse or neglect and chil-  
4 dren undergoing delinquency proceedings. It is the fur-  
5 ther purpose of this article to establish, as a complement to  
6 other programs of the department of health and human  
7 resources, a multidisciplinary screening, advisory and  
8 planning system to assist courts in facilitating permanency  
9 planning, following the initiation of judicial proceedings,  
10 to recommend alternatives and to coordinate evaluations  
11 and in-community services. It is the further purpose of  
12 this article to ensure that children are safe from abuse and  
13 neglect and to coordinate investigation of alleged child  
14 abuse offenses and competent criminal prosecution of  
15 offenders to ensure that safety, as determined appropriate  
16 by the prosecuting attorney.

17 (b) Nothing in this article precludes any multidiscip-  
18 linary team from considering any case upon the consent  
19 of the members of the team.

**§49-5D-3. Multidisciplinary treatment planning process.**

1 (a) On or before the first day of January, one thou-  
2 sand nine hundred ninety-five, a multidisciplinary treat-  
3 ment planning process shall be established within each  
4 county of the state, either separately or in conjunction with  
5 a contiguous county by the secretary of the department

6 with advice and assistance from the prosecutor's advisory  
7 council as set forth in section four, article four, chapter  
8 seven of this code.

9 Treatment teams shall assess, plan and implement a  
10 comprehensive, individualized service plan for children  
11 who are victims of abuse or neglect and their families  
12 when a judicial proceeding has been initiated involving the  
13 child or children and for children and their families in-  
14 volved in delinquency proceedings.

15 (b) Each treatment team shall be convened and direct-  
16 ed by the child's or family's case manager. The treatment  
17 team shall consist of the child's custodial parent(s) or  
18 guardian(s), other immediate family members, the attor-  
19 ney(s) representing the parent(s) of the child, if assigned  
20 by a judge of the circuit court, the child, if the child is  
21 over the age of twelve, and if the child's participation is  
22 otherwise appropriate, the child, if under the age of twelve  
23 when the team determines that the child's participation is  
24 appropriate, the guardian ad litem, the prosecuting attor-  
25 ney or his or her designee, and any other agency, person  
26 or professional who may contribute to the team's efforts to  
27 assist the child and family.

28 (c) The treatment team shall coordinate their activities  
29 and membership with local family resource networks, and  
30 coordinate with other local and regional child and family  
31 service planning committees to assure the efficient plan-  
32 ning and delivery of child and family services on a local  
33 and regional level.

34 (d) State, county and local agencies shall provide the  
35 multidisciplinary treatment teams with any information  
36 requested in writing by the team as allowable by law or  
37 upon receipt of a certified copy of the circuit court's order  
38 directing said agencies to release information in its posses-  
39 sion relating to the child. The team shall assure that all  
40 information received and developed in connection with  
41 the provisions of this article remain confidential. For pur-  
42 poses of this section, the term "confidential" shall be con-  
43 strued in accordance with the provisions of section one,  
44 article seven of this chapter.

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

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

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

37 law to represent the child. Any attorney appointed pursu-  
38 ant to this section shall perform all duties required as an  
39 attorney licensed to practice law in the state of West Vir-  
40 ginia.

41 (b) In any proceeding brought pursuant to the provi-  
42 sions of this article, the court may grant any respondent an  
43 improvement period in accord with the provisions of this  
44 article. During such period, the court may require tempo-  
45 rary custody with a responsible person which has been  
46 found to be a fit and proper person for the temporary  
47 custody of the child or children, or the state department or  
48 other agency during the improvement period. An order  
49 granting such improvement period shall require the de-  
50 partment to prepare and submit to the court a family case  
51 plan in accordance with the provisions of section three,  
52 article six-d of this chapter.

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

71 (d) Any petition filed and any proceeding held under  
72 the provisions of this article shall, to the extent practicable,  
73 be given priority over any other civil action before the  
74 court, except proceedings under article two-a, chapter  
75 forty-eight of this code and actions in which trial is in  
76 progress. Any petition filed under the provisions of this

77 article shall be docketed immediately upon filing. Any  
78 hearing to be held at the end of an improvement period  
79 and any other hearing to be held during any proceedings  
80 under the provisions of this article shall be held as nearly  
81 as practicable on successive days and, with respect to said  
82 hearing to be held at the end of an improvement period,  
83 shall be held as close in time as possible after the end of  
84 said improvement period and shall be held within sixty  
85 days of the termination of such improvement period.

86 (e) Following the court's determination, it shall be  
87 inquired of the parents or custodians whether or not ap-  
88 peal is desired and the response transcribed. A negative  
89 response shall not be construed as a waiver. The evidence  
90 shall be transcribed and made available to the parties or  
91 their counsel as soon as practicable, if the same is required  
92 for purposes of further proceedings. If an indigent person  
93 intends to pursue further proceedings, the court reporter  
94 shall furnish a transcript of the hearing without cost to the  
95 indigent person if an affidavit is filed stating that he can-  
96 not pay therefor.

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

1 (a) Upon the filing of a petition, the court may order  
2 that the child alleged to be an abused or neglected child  
3 be delivered for not more than ten days into the custody  
4 of the state department or a responsible person found by  
5 the court to be a fit and proper person for the temporary  
6 care of the child pending a preliminary hearing, if it finds  
7 that: (1) There exists imminent danger to the physical  
8 well-being of the child, and (2) there are no reasonably  
9 available alternatives to removal of the child, including,  
10 but not limited to, the provision of medical, psychiatric,  
11 psychological or homemaking services in the child's pres-  
12 ent custody: *Provided*, That where the alleged abusing  
13 person, if known, is a member of a household, the court  
14 shall not allow placement pursuant to this section of the  
15 child or children in said home unless the alleged abusing  
16 person is or has been precluded from visiting or residing  
17 in said home by judicial order. In a case where there is  
18 more than one child in the home, or in the temporary care,

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

44 (b) Whether or not the court orders immediate transfer  
45 of custody as provided in subsection (a) of this section, if  
46 the facts alleged in the petition demonstrate to the court  
47 that there exists imminent danger to the child, the court  
48 may schedule a preliminary hearing giving the respon-  
49 dents at least five days' actual notice. If the court finds at  
50 the preliminary hearing that there are no alternatives less  
51 drastic than removal of the child and that a hearing on the  
52 petition cannot be scheduled in the interim period, the  
53 court may order that the child be delivered into the tem-  
54 porary custody of the state department or a responsible  
55 person or agency found by the court to be a fit and prop-  
56 er person for the temporary care of the child for a period  
57 not exceeding sixty days: *Provided*, That the court order  
58 shall state: (1) That continuation in the home is contrary  
59 to the best interests of the child and state the reasons there-



60 for; (2) whether or not the department made reasonable  
61 efforts to prevent the child's removal from his or her  
62 home; (3) whether or not the state department made a  
63 reasonable effort to prevent the placement or that the  
64 emergency situation made such efforts unreasonable or  
65 impossible; and (4) what efforts should be made by the  
66 department to facilitate the child's return home: *Provided,*  
67 *however,* That if the court grants an improvement period  
68 as provided in section twelve of this article, the sixty-day  
69 limit upon temporary custody is waived.

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

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

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

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

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

39 (1) Dismiss the petition;

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

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

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

50 (5) Upon a finding that the abusing parent or parents  
51 are presently unwilling or unable to provide adequately  
52 for the child's needs, commit the child temporarily to the  
53 custody of the state department, a licensed private child  
54 welfare agency or a suitable person who may be appointed  
55 guardian by the court. The court order shall state: (1) That  
56 continuation in the home is contrary to the best interests

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

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

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

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

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

128 (2) The abusing parent or parents have willfully re-  
129 fused or are presently unwilling to cooperate in the devel-  
130 opment of a reasonable family case plan designed to lead  
131 to the child's return to their care, custody and control;

132 (3) The abusing parent or parents have not responded  
133 to or followed through with a reasonable family case plan  
134 or other rehabilitative efforts of social, medical, mental  
135 health or other rehabilitative agencies designed to reduce  
136 or prevent the abuse or neglect of the child, as evidenced  
137 by the continuation or insubstantial diminution of condi-

138 tions which threatened the health, welfare or life of the  
139 child;

140 (4) The abusing parent or parents have abandoned the  
141 child;

142 (5) The abusing parent or parents have repeatedly or  
143 seriously injured the child physically or emotionally, or  
144 have sexually abused or sexually exploited the child, and  
145 the degree of family stress and the potential for further  
146 abuse and neglect are so great as to preclude the use of  
147 resources to mitigate or resolve family problems or assist  
148 the abusing parent or parents in fulfilling their responsi-  
149 bilities to the child; or

150 (6) The abusing parent or parents have incurred emo-  
151 tional illness, mental illness or mental deficiency of such  
152 duration or nature as to render such parent or parents  
153 incapable of exercising proper parenting skills or suffi-  
154 ciently improving the adequacy of such skills.

155 (c) The court may as an alternative disposition allow to  
156 the parents or custodians an improvement period not to  
157 exceed six months. During this period the parental rights  
158 shall not be permanently terminated and the court shall  
159 require the parent to rectify the conditions upon which the  
160 determination was based. The court may order the child to  
161 be placed with the parents, or any person found to be a fit  
162 and proper person for the temporary care of the child  
163 during the period. At the end of the period the court shall  
164 hold a hearing to determine whether the conditions have  
165 been adequately improved, and at the conclusion of such  
166 hearing, shall make a further dispositional order in accor-  
167 dance with this section.

**§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-one  
3 of this code or articles eight-b or eight-d of said chapter  
4 against a child and the person has custodial, visitation or  
5 other parental rights to the child who is the victim of the  
6 offense or to any child who resides in the same household  
7 as the victim, the court shall, at the time of sentencing, find  
8 that the person is an abusing parent within the meaning of

9 this chapter as to the child victim, and may find that the  
10 person is an abusing parent as to any child who resides in  
11 the same household as the victim, and the court shall take  
12 such further steps as are required by this article.

**§49-6-12. Improvement period in cases of child neglect or abuse.**

1 (a) A court may grant a respondent an improvement  
2 period of a period not to exceed three months prior to  
3 making a finding that a child is abused or neglected pur-  
4 suant to section two of this article only when:

5 (1) The respondent files a written motion requesting  
6 the improvement period;

7 (2) The respondent demonstrates by clear and con-  
8 vincing evidence that the respondent is likely to fully  
9 participate in the improvement period and the court fur-  
10 ther makes a finding, on the record, of the terms of the  
11 improvement period;

12 (3) In the order granting the improvement period, the  
13 court (A) orders that a hearing be held to review the mat-  
14 ter within sixty days of the granting of the improvement  
15 period, or (B) orders that a hearing be held to review the  
16 matter within ninety days of the granting of the improve-  
17 ment period and that the department submit a report as to  
18 the respondents progress in the improvement period with-  
19 in sixty days of the order granting the improvement peri-  
20 od; and

21 (4) The order granting the improvement period re-  
22 quires the department to prepare and submit to the court  
23 an individualized family case plan in accordance with the  
24 provisions of section three, article six-d of this chapter;

25 (b) After finding that a child is an abused or neglected  
26 child pursuant to section two of this article, a court may  
27 grant a respondent an improvement period of a period not  
28 to exceed six months when:

29 (1) The respondent files a written motion requesting  
30 the improvement period;

31 (2) The respondent demonstrates, by clear and con-

32   vincing evidence that the respondent is likely to fully  
33   participate in the improvement period and the court fur-  
34   ther makes a finding, on the record, of the terms of the  
35   improvement period;

36       (3) In the order granting the improvement period, the  
37   court (A) orders that a hearing be held to review the mat-  
38   ter within sixty days of the granting of the improvement  
39   period, or (B) orders that a hearing be held to review the  
40   matter within ninety days of the granting of the improve-  
41   ment period and that the department submit a report as to  
42   the respondents progress in the improvement period with-  
43   in sixty days of the order granting the improvement peri-  
44   od;

45       (4) Since the initiation of the proceeding, the respon-  
46   dent has not previously been granted any improvement  
47   period or the respondent demonstrates that since the initial  
48   improvement period, the respondent has experienced a  
49   substantial change in circumstances. Further the respon-  
50   dent shall demonstrate that due to that change in circum-  
51   stances the respondent is likely to fully participate in a  
52   further improvement period; and

53       (5) The order granting the improvement period re-  
54   quires the department to prepare and submit to the court  
55   an individualized family case plan in accordance with the  
56   provisions of section three, article six-d of this chapter.

57       (c) The court may grant an improvement period not to  
58   exceed six months as a disposition pursuant to section five  
59   of this article when:

60       (1) The respondent moves in writing for the improve-  
61   ment period;

62       (2) The respondent demonstrates, by clear and con-  
63   vincing evidence that the respondent is likely to fully  
64   participate in the improvement period and the court fur-  
65   ther makes a finding, on the record, of the terms of the  
66   improvement period;

67       (3) In the order granting the improvement period, the  
68   court (A) orders that a hearing be held to review the mat-  
69   ter within sixty days of the granting of the improvement



70 period, or (B) orders that a hearing be held to review the  
71 matter within ninety days of the granting of the improve-  
72 ment period and that the department submit a report as to  
73 the respondents progress in the improvement period with-  
74 in sixty days of the order granting the improvement peri-  
75 od;

76 (4) Since the initiation of the proceeding, the respon-  
77 dent has not previously been granted any improvement  
78 period or the respondent demonstrates that since the initial  
79 improvement period, the respondent has experienced a  
80 substantial change in circumstances. Further, the respon-  
81 dent shall demonstrate that due to that change in circum-  
82 stances, the respondent is likely to fully participate in the  
83 improvement period; and

84 (5) The order granting the improvement period shall  
85 require the department to prepare and submit to the court  
86 an individualized family case plan in accordance with the  
87 provisions of section three, article six-d of this chapter.

88 (d) When any improvement period is granted to a  
89 respondent pursuant to the provisions of this section, the  
90 respondent shall be responsible for the initiation and com-  
91 pletion of all terms of the improvement period. The court  
92 may order the state department to pay expenses associated  
93 with the services provided during the improvement period  
94 when the respondent has demonstrated that he or she is  
95 unable to bear such expenses.

96 (e) When any improvement period is granted to a  
97 respondent pursuant to the provisions of this section, the  
98 respondent shall execute a release of all medical informa-  
99 tion regarding that respondent, including but not limited  
100 to, information provided by mental health and substance  
101 abuse professionals and facilities. Such release shall be  
102 accepted by any such professional or facility regardless of  
103 whether the release conforms to any standard required by  
104 that facility.

105 (f) When any respondent is granted an improvement  
106 period pursuant to the provisions of this article, the depart-  
107 ment shall monitor the progress of such person in the  
108 improvement period. When the respondent fails to partici-

109 pate in any service mandated by the improvement period,  
 110 the state department shall initiate action to inform the  
 111 court of that failure. When the department demonstrates  
 112 that the respondent has failed to participate in any provi-  
 113 sion of the improvement period, the court shall forthwith  
 114 terminate the improvement period.

115 (g) A court may extend any improvement period  
 116 granted pursuant to subsections (b) or (c) of this section  
 117 for a period not to exceed three months when the court  
 118 finds that the respondent has substantially complied with  
 119 the terms of the improvement period; that the continuation  
 120 of the improvement period will not substantially impair  
 121 the ability of the department to permanently place the  
 122 child; and that such extension is otherwise consistent with  
 123 the best interest of the child.

124 (h) Upon the motion by any party, the court shall  
 125 terminate any improvement period granted pursuant to  
 126 this section when the court finds that respondent has failed  
 127 to fully participate in the terms of the improvement peri-  
 128 od.

129 (i) This section may not be construed to prohibit a  
 130 court from ordering a respondent to participate in services  
 131 designed to reunify a family or to relieve the department  
 132 of any duty to make reasonable efforts to reunify a family  
 133 required by state or federal law.

134 (j) Any hearing scheduled pursuant to the provisions  
 135 of this section may be continued only for good cause  
 136 upon a written motion properly served on all parties.  
 137 When a court grants such continuance, the court shall  
 138 enter an order granting the continuance which shall speci-  
 139 fy a future date when the hearing will be held.

140 (k) Any hearing to be held at the end of an improve-  
 141 ment period shall be held as nearly as practicable on suc-  
 142 cessive days and shall be held as close in time as possible  
 143 after the end of said improvement period and shall be held  
 144 no later than sixty days of the termination of such im-  
 145 provement period.

**§49-6D-3. Family case plans for parents of abused or neglect-  
 ed children.**

1 (a) The department shall develop a family case plan  
2 for every family wherein a person has been referred to the  
3 department after being allowed an improvement period  
4 under the provisions of section twelve, article six, of this  
5 chapter. The department may also prepare a family case  
6 plan for any person who voluntarily seeks child abuse and  
7 neglect services from the department, or who is referred to  
8 the department by another public agency or private orga-  
9 nization. The family case plan is to clearly set forth an  
10 organized, realistic method of identifying family problems  
11 and the logical steps to be used in resolving or lessening  
12 those problems. Every family case plan prepared by the  
13 department shall contain the following:

14 (1) A listing of specific, measurable, realistic goals to  
15 be achieved;

16 (2) An arrangement of goals into an order of priority;

17 (3) A listing of the problems that will be addressed by  
18 each goal;

19 (4) A specific description of how the assigned case-  
20 worker or caseworkers and the abusing parent, guardian or  
21 custodian will achieve each goal;

22 (5) A description of the departmental and community  
23 resources to be used in implementing the proposed actions  
24 and services;

25 (6) A list of the services which will be provided;

26 (7) Time targets for the achievement of goals or por-  
27 tions of goals;

28 (8) An assignment of tasks to the abusing or neglect-  
29 ing parent, guardian or custodian, to the caseworker or  
30 caseworkers and to other participants in the planning pro-  
31 cess; and

32 (9) A designation of when and how often tasks will be  
33 performed.

34 (b) In cases where the family has been referred to the  
35 department by a court under the provisions of this chapter,  
36 and further action before the court is pending, the family  
37 case plan described in subsection (a) of this section shall

38 be furnished to the court within thirty days after the entry  
39 of the order referring the case to the department, and shall  
40 be available to counsel for the parent, guardian or custodi-  
41 an and counsel for the child or children. The department  
42 shall encourage participation in the development of the  
43 family case plan by the parent, guardian or custodian, and,  
44 if the child is above the age of twelve years and the child's  
45 participation is otherwise appropriate, by the child. It shall  
46 be the duty of counsel for the participants to participate in  
47 the development of the family case plan. The family case  
48 plan may be modified from time to time by the depart-  
49 ment to allow for flexibility in goal development, and in  
50 each such case the modifications shall be submitted to the  
51 court in writing. The court shall examine the proposed  
52 family case plan or any modification thereof, and upon a  
53 finding by the court that the plan or modified plan can be  
54 easily communicated, explained and discussed so as to  
55 make the participants accountable and able to understand  
56 the reasons for any success or failure under the plan, the  
57 court shall inform the participants of the probable action  
58 of the court if goals are met or not met.

59 (c) (1) In addition to the family case plan provided for  
60 under the provisions of subsection (b) of this section, the  
61 department shall prepare, as an appendix to the family  
62 case plan, an expanded "worker's case plan." As utilized by  
63 the department under the provisions of this section, the  
64 worker's case plan shall consist of the following:

65 (A) All of the information contained in the family  
66 case plan described in subsection (c) of this section;

67 (B) A prognosis for each of the goals projected in the  
68 family case plan, assessing the capacity of the parent,  
69 guardian or custodian to achieve the goal and whether  
70 available treatment services are likely to have the desired  
71 outcome;

72 (C) A listing of the criteria to be used to assess the  
73 degree to which each goal is attained;

74 (D) A description of when and how the department  
75 will decide when and how well each goal has been at-  
76 tained;

77 (E) If possible, a listing of alternative methods and  
78 specific services which the caseworker or caseworkers may  
79 consider using if the original plan does not work; and

80 (F) A listing of criteria to be used in determining when  
81 the family case plan should be terminated.

82 (2) Because the nature of the information contained in  
83 the worker's case plan described in subdivision (1) of this  
84 subsection may, in some cases, be construed to be negative  
85 with respect to the probability of change, or may be  
86 viewed as a caseworker's attempt to impose personal values  
87 into the situation, or may raise barriers of hostility and  
88 resistance between the caseworker and the family mem-  
89 bers, the worker's case plan shall not be made available to  
90 the court or to persons outside of the department, but shall  
91 be used by the department for the purpose of confirming  
92 the effectiveness of the family case plan or for determin-  
93 ing that changes in the family case plan need to be made.

94 (d) In furtherance of the provisions of this article, the  
95 department shall, within the limits of available funds, es-  
96 tablish programs and services for the following purposes:

97 (1) For the development and establishment of training  
98 programs for professional and paraprofessional personnel  
99 in the fields of medicine, law, education, social work and  
100 other relevant fields who are engaged in, or intend to work  
101 in, the field of the prevention, identification and treatment  
102 of child abuse and neglect; and training programs for  
103 children, and for persons responsible for the welfare of  
104 children, in methods of protecting children from child  
105 abuse and neglect;

106 (2) For the establishment and maintenance of centers,  
107 serving defined geographic areas, staffed by multidis-  
108 ciplinary teams and community teams of personnel  
109 trained in the prevention, identification, and treatment of  
110 child abuse and neglect cases, to provide a broad range of  
111 services related to child abuse and neglect, including direct  
112 support and supervision of satellite centers and attention  
113 homes, as well as providing advice and consultation to  
114 individuals, agencies and organizations which request such  
115 services;

116 (3) For furnishing services of multidisciplinary teams  
 117 and community teams, trained in the prevention, identifi-  
 118 cation and treatment of child abuse and neglect cases, on a  
 119 consulting basis to small communities where such services  
 120 are not available;

121 (4) For other innovative programs and projects that  
 122 show promise of successfully identifying, preventing or  
 123 remedying the causes of child abuse and neglect, includ-  
 124 ing, but not limited to, programs and services designed to  
 125 improve and maintain parenting skills, programs and pro-  
 126 jects for parent self-help, and for prevention and treatment  
 127 of drug-related child abuse and neglect; and

128 (5) Assisting public agencies or nonprofit private  
 129 organizations or combinations thereof in making applica-  
 130 tions for grants from, or in entering into contracts with, the  
 131 secretary of the federal department of health and human  
 132 services for demonstration programs and projects de-  
 133 signed to identify, prevent and treat child abuse and ne-  
 134 glect.

135 (e) Agencies, organizations and programs funded to  
 136 carry out the purposes of this section shall be structured so  
 137 as to comply with any applicable federal law, any regula-  
 138 tion of the federal department of health and human servic-  
 139 es or the secretary thereof, and any final comprehensive  
 140 plan of the federal advisory board on child abuse and  
 141 neglect. In funding organizations, the department shall, to  
 142 the extent feasible, ensure that parental organizations com-  
 143 bating child abuse and neglect receive preferential treat-  
 144 ment.

**§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 the person has  
 3 custodial, visitation or other parental rights to the child  
 4 who is the victim of the offense or any child who resides  
 5 in the same household as the victim, the court shall, at the  
 6 time of sentencing, find that the person is an abusing par-  
 7 ent within the meaning of article six, chapter forty-nine of  
 8 this code as to the child victim, and may find that the per-  
 9 son is an abusing parent as to any child who resides in the

10 same household as the victim, and shall take such further  
11 action in accord with the provisions of said article.

**§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 the person has  
3 custodial, visitation or other parental rights to the child  
4 who is the victim of the offense or any child who resides  
5 in the same household as the victim, the court shall, at the  
6 time of sentencing, find that the person is an abusing par-  
7 ent within the meaning of article six, chapter forty-nine of  
8 this code as to the child victim, and may find that the per-  
9 son is an abusing parent as to any child who resides in the  
10 same household as the victim, and shall take such further  
11 action in accord with the provisions of said article.

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

Rudy Schoonover  
Chairman Senate Committee

Rudy Seacrest  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.)

Russell B. Brown  
Clerk of the Senate

Bugan M. King  
Clerk of the House of Delegates

Carl Ray Tomblin  
President of the Senate

Robert C. Calvert  
Speaker of the House of Delegates

The within is approved this the 15<sup>th</sup>  
day of April, 1996

James E. Cox  
Governor



PRESENTED TO THE

GOVERNOR

Date

3/28/96

Time

10:00 am