

SB 773

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SENATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



ENROLLED

SENATE BILL NO. 773

(By Senator WHITE, ET AL)



PASSED MARCH 14, 1998

In Effect JULY 1, 1998 Passage

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OFFICE OF THE CLERK
LEGISLATIVE DEPARTMENT

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Senate Bill No. 773

(BY SENATORS WHITE, WOOTON, BALL, BOWMAN, DITTMAR,
FANNING, HUNTER, KESSLER, OLIVERIO, ROSS, SCHOONOVER,
SNYDER, BUCKALEW, KIMBLE AND SCOTT)

[Passed March 14, 1998; to take effect July 1, 1998.]

AN ACT to amend and reenact sections one and three, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections sixteen and seventeen, article two of said chapter; to amend and reenact sections one, three, five and eight, article six of said chapter; to further amend said article by adding thereto two new sections, designated sections five-a and five-b; and to amend and reenact section three, article six-d of said chapter, all relating generally to enacting legislation to comply with mandates of the federal Adoption and Safe Families Act of 1997 regarding the permanent placement of children in foster care.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-1. Purpose.

1 (a) The purpose of this chapter is to provide a system of
2 child welfare for the children of this state that has goals
3 to:

4 (1) Assure each child care, safety and guidance;

5 (2) Serve the mental and physical welfare of the child;

6 (3) Preserve and strengthen the child's family ties;

7 (4) Recognize the fundamental rights of children and
8 parents;

9 (5) Adopt procedures and establish programs that are
10 family-focused rather than focused on specific family
11 members, except where the best interests of the child or
12 the safety of the community are at risk;

13 (6) Involve the child and his or her family or caregiver in
14 the planning and delivery of programs and services;

15 (7) Provide services that are community-based, in the
16 least restrictive settings that are consonant with the needs
17 and potentials of the child and his or her family;

18 (8) Provide for early identification of the problems of
19 children and their families, and respond appropriately
20 with measures and services to prevent abuse and neglect
21 or delinquency;

22 (9) Provide a system for the rehabilitation or detention
23 of juvenile delinquents; and

24 (10) Protect the welfare of the general public.

25 In pursuit of these goals it is the intention of the Legis-
26 lature to provide for removing the child from the custody
27 of parents only when the child's welfare or the safety and
28 protection of the public cannot be adequately safeguarded
29 without removal; and, when the child has to be removed
30 from his or her family, to secure for the child custody, care
31 and discipline consistent with the child's best interests
32 and other goals herein set out. It is further the intention
33 of the Legislature to require that any reunification,
34 permanency or preplacement preventative services
35 address the safety of the child.

36 (b) The child welfare service of the state shall be admin-
37 istered by the state department of health and human
38 resources and the division of juvenile services of the
39 department of military affairs and public safety.

40 The state department of health and human resources is
41 designated as the agency to cooperate with the United
42 States department of health and human services and
43 United States department of justice in extending and
44 improving child welfare services, to comply with regula-
45 tions thereof, and to receive and expend federal funds for
46 these services. The division of juvenile services of the
47 department of military affairs and public safety is desig-
48 nated as the agency to cooperate with the United States
49 department of health and human services and United
50 States department of justice in operating, maintaining and
51 improving juvenile correction facilities and centers for the
52 predispositional detention of children, to comply with
53 regulations thereof, and to receive and expend federal
54 funds for these services.

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

1 (a) "Abused child" means a child whose health or welfare

2 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 mental
6 or emotional injury, upon the child or another child in the
7 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 other
16 custodian, regardless of his or her age, whose conduct, as
17 alleged in the petition charging child abuse or neglect, has
18 been adjudged by the court to constitute child abuse or
19 neglect.

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

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

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

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

33 (3) Preventing the unnecessary removal of children from
34 their families by identifying family problems and assisting

35 families in resolving problems which could lead to a
36 removal of children and a breakup of the family;

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

40 (5) Placing children in suitable adoptive homes when
41 reunifying the children with their families is not possible
42 or appropriate; and

43 (6) Assuring the adequate care of children who have
44 been placed in the custody of the department or third
45 parties.

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

54 (1) Nonaccidental trauma inflicted by a parent, guard-
55 ian, custodian, sibling or a babysitter or other caretaker;
56 or

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

60 (3) Nutritional deprivation; or

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

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

64 (6) Substantial emotional injury inflicted by a parent,
65 guardian or custodian; or

66 (7) Sale or attempted sale of the child by the parent,

67 guardian or custodian.

68 (f) "Legal guardianship" means the relationship between
69 a child and caretaker as established pursuant to the
70 provisions of article ten, chapter forty-four of this code.

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

86 (h) (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, medi-
91 cal 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 of
96 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 (i) "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 (j) "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 know-
109 ingly procure another person to engage in, with such child,
110 notwithstanding the fact that the child may have willingly
111 participated in such conduct or the fact that the child may
112 have suffered no apparent physical injury or mental or
113 emotional injury as a result of such conduct:

114 (i) Sexual intercourse; or

115 (ii) Sexual intrusion; or

116 (iii) Sexual contact; or

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

125 (i) Sexual intercourse; or

126 (ii) Sexual intrusion; or

127 (iii) Sexual contact; or

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

134 alarming the child.

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

138 (l) "Sexual exploitation" means an act whereby:

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

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

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

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

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

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

165 (q) "Serious physical abuse" means bodily injury which
166 creates a substantial risk of death, which causes serious or

167 prolonged disfigurement, prolonged impairment of health
168 or prolonged loss or impairment of the function of any
169 bodily organ.

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

173 (s) "Time-limited reunification services" means individ-
174 ual, group, and family counseling, inpatient, residential or
175 outpatient substance abuse treatment services, mental
176 health services, assistance to address domestic violence,
177 services designed to provide temporary child care and
178 therapeutic services for families, including crisis nurseries
179 and transportation to or from any such services, provided
180 during fifteen of the most recent twenty-two months a
181 child has been in foster care, as determined by the earlier
182 date of the first judicial finding that the child is subjected
183 to abuse or neglect, or the date which is sixty days after
184 the child is removed from home.

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

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

1 The division of juvenile services of the department of
2 military affairs and public safety is hereby authorized and
3 empowered to operate and maintain centers for juveniles
4 needing detention pending disposition by a court having
5 juvenile jurisdiction or temporary care following such
6 court action.

7 The department of health and human resources is hereby
8 authorized and empowered to provide care, support and
9 protective services for children who are handicapped by
10 dependency, neglect, single parent status, mental or
11 physical disability, or who for other reasons are in need of
12 public service. Such department is also hereby authorized
13 and empowered in its discretion to accept children for
14 care from their parent or parents, guardian, custodian or

15 relatives and to accept the custody of children committed
16 to its care by courts. The department of health and human
17 resources or any county office of such department is also
18 hereby authorized and empowered in its discretion to
19 accept temporary custody of children for care from any
20 law-enforcement officer in an emergency situation.

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

§49-2-17. Subsidized adoption and legal guardianship.

1 From funds appropriated to the department of health
2 and human resources, the secretary shall establish a
3 system of assistance for facilitating the adoption or legal
4 guardianship of children who are dependents of the
5 department or a child welfare agency licensed to place
6 children for adoption, legally free for adoption and in
7 special circumstances either because they:

8 (a) Have established emotional ties with prospective
9 adoptive parents or prospective legal guardians while in
10 their care; or

11 (b) Are not likely to be adopted or become a ward of a
12 legal guardian by reason of one or more of the following
13 conditions:

14 (1) They have a physical or mental disability;

15 (2) They are emotionally disturbed; or

16 (3) They are older children; or

17 (4) They are a part of a sibling group; or

18 (5) They are a member of a racial or ethnic minority; or

19 (6) They have any combination of these conditions.

20 The department shall provide assistance in the form of
21 subsidies or other services to parents who are found and
22 approved for adoption or legal guardianship of a child
23 certified as eligible for subsidy by the department, but
24 before the final decree of adoption or order of legal
25 guardianship is entered, there must be a written agree-
26 ment between the family entering into the subsidized
27 adoption or legal guardianship and the department.
28 Adoption or legal guardianship subsidies in individual
29 cases may commence with the adoption or legal guardian-
30 ship placement, and will vary with the needs of the child
31 as well as the availability of other resources to meet the
32 child's needs. The subsidy may be for special services

33 only, or for money payments, and either for a limited
34 period, or for a long term, or for any combination of the
35 foregoing. The specific financial terms of the subsidy
36 shall be included in the agreement between the depart-
37 ment and the adoptive parents or legal guardians. The
38 amount of the time-limited or long-term subsidy may in
39 no case exceed that which would be allowable from time
40 to time for such child under foster family care, or, in the
41 case of a special service, the reasonable fee for the service
42 rendered. In addition, the department shall provide either
43 medicaid or other health insurance coverage for any
44 special needs child for whom there is an adoption or legal
45 guardianship assistance agreement between the depart-
46 ment and the adoptive parent or legal guardian and who
47 the department determines cannot be placed with an
48 adoptive parent or legal guardian without medical assis-
49 tance because the child has special needs for medical,
50 mental health or rehabilitative care.

51 Whenever significant emotional ties have been estab-
52 lished between a child and his foster parents, and the
53 foster parents seek to adopt the child or to become legal
54 guardians, the child shall be certified as eligible for a
55 subsidy conditioned upon his adoption or his becoming a
56 ward of a legal guardian under applicable procedures by
57 the foster parents.

58 In all other cases, after reasonable efforts have been
59 made without the use of subsidy and no appropriate
60 adoptive family or legal guardian has been found for the
61 child, the department shall certify the child as eligible for
62 a subsidy in the event of adoption or a legal guardianship.

63 If the child is the dependent of a voluntary licensed
64 child-placing agency, that agency shall present to the
65 department evidence of significant emotional ties between
66 the child and his foster parents or evidence of inability to
67 place the child for adoption. In no event shall the value of
68 the services and assistance provided by the department

69 under an agreement pursuant to this section exceed the
70 value of assistance available to foster families in similar
71 circumstances. All records regarding subsidized adoptions
72 or legal guardianships shall be held in confidence, how-
73 ever, records regarding the payment of public funds for
74 subsidized adoptions or legal guardianships shall be
75 available for public inspection provided they do not
76 directly or indirectly identify any child or persons receiv-
77 ing funds for such child.

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

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

1 (a) If the department or a reputable person believes that
2 a child is neglected or abused, the department or the
3 person may present a petition setting forth the facts to the
4 circuit court in the county in which the child resides, or to
5 the judge of such court in vacation. The petition shall be
6 verified by the oath of some credible person having
7 knowledge of the facts. The petition shall allege specific
8 conduct including time and place, how such conduct
9 comes within the statutory definition of neglect or abuse
10 with references thereto, any supportive services provided
11 by the department to remedy the alleged circumstances
12 and the relief sought. Upon filing of the petition, the
13 court shall set a time and place for a hearing and shall
14 appoint counsel for the child. When there is an order for
15 temporary custody pursuant to section three of this
16 article, such hearing shall be held within thirty days of
17 such order, unless a continuance for a reasonable time is
18 granted to a date certain, for good cause shown.

19 (b) The petition and notice of the hearing shall be served
20 upon both parents and any other custodian, giving to such
21 parents or custodian at least ten days' notice. Notice shall
22 also be given to the department, any foster or preadoptive
23 parent, and any relative providing care for the child. In
24 cases wherein personal service within West Virginia

25 cannot be obtained after due diligence upon any parent or
26 other custodian, a copy of the petition and notice of the
27 hearing shall be mailed to such person by certified mail,
28 addressee only, return receipt requested, to the last known
29 address of such person. If said person signs the certificate,
30 service shall be complete and said certificate shall be filed
31 as proof of said service with the clerk of the circuit court.
32 If service cannot be obtained by personal service or by
33 certified mail, notice shall be by publication as a Class II
34 legal advertisement in compliance with the provisions of
35 article three, chapter fifty-nine of this code. A notice of
36 hearing shall specify the time and place of the hearing, the
37 right to counsel of the child and parents or other custodi-
38 ans at every stage of the proceedings and the fact that
39 such proceedings can result in the permanent termination
40 of the parental rights. Failure to object to defects in the
41 petition and notice shall not be construed as a waiver.

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

**§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 that
2 the child alleged to be an abused or neglected child be
3 delivered for not more than ten days into the custody of
4 the state department or a responsible person found by the
5 court to be a fit and proper person for the temporary care
6 of the child pending a preliminary hearing, if it finds that:
7 (1) There exists imminent danger to the physical well-
8 being of the child; and (2) there are no reasonably avail-
9 able alternatives to removal of the child, including, but
10 not limited to, the provision of medical, psychiatric,
11 psychological or homemaking services in the child's
12 present custody: *Provided*, That where the alleged
13 abusing person, if known, is a member of a household, the

14 court shall not allow placement pursuant to this section of
15 the child or children in said home unless the alleged
16 abusing person is or has been precluded from visiting or
17 residing in said home by judicial order. In a case where
18 there is more than one child in the home, or in the tempo-
19 rary care, custody or control of the alleged offending
20 parent, the petition shall so state, and notwithstanding the
21 fact that the allegations of abuse or neglect may pertain to
22 less than all of such children, each child in the home for
23 whom relief is sought shall be made a party to the pro-
24 ceeding. Even though the acts of abuse or neglect alleged
25 in the petition were not directed against a specific child
26 who is named in the petition, the court shall order the
27 removal of such child, pending final disposition, if it finds
28 that there exists imminent danger to the physical well-
29 being of the child and a lack of reasonable available
30 alternatives to removal. The initial order directing such
31 custody shall contain an order appointing counsel and
32 scheduling the preliminary hearing, and upon its service
33 shall require the immediate transfer of custody of such
34 child or children to the department or a responsible
35 relative which may include any parent, guardian, or other
36 custodian. The court order shall state: (1) That continua-
37 tion in the home is contrary to the best interests of the
38 child and why; and (2) whether or not the department
39 made reasonable efforts to preserve the family and
40 prevent the placement or that the emergency situation
41 made such efforts unreasonable or impossible. The order
42 may also direct any party or the department to initiate or
43 become involved in services to facilitate reunification of
44 the family.

45 (b) Whether or not the court orders immediate transfer
46 of custody as provided in subsection (a) of this section, if
47 the facts alleged in the petition demonstrate to the court
48 that there exists imminent danger to the child, the court
49 may schedule a preliminary hearing giving the respon-
50 dents at least five days' actual notice. If the court finds at

51 the preliminary hearing that there are no alternatives less
52 drastic than removal of the child and that a hearing on the
53 petition cannot be scheduled in the interim period, the
54 court may order that the child be delivered into the
55 temporary custody of the department or a responsible
56 person or agency found by the court to be a fit and proper
57 person for the temporary care of the child for a period not
58 exceeding sixty days: *Provided*, That the court order shall
59 state: (1) That continuation in the home is contrary to the
60 best interests of the child and set forth the reasons there-
61 for; (2) whether or not the department made reasonable
62 efforts to preserve the family and to prevent the child's
63 removal from his or her home; (3) whether or not the
64 department made reasonable efforts to preserve the family
65 and to prevent the placement or that the emergency
66 situation made such efforts unreasonable or impossible;
67 and (4) what efforts should be made by the department, if
68 any, to facilitate the child's return home: *Provided*,
69 *however*, That if the court grants an improvement period
70 as provided in section twelve of this article, the sixty-day
71 limit upon temporary custody is waived.

72 (c) If a child or children shall, in the presence of a child
73 protective service worker, be in an emergency situation
74 which constitutes an imminent danger to the physical
75 well-being of the child or children, as that phrase is
76 defined in section three, article one of this chapter, and if
77 such worker has probable cause to believe that the child
78 or children will suffer additional child abuse or neglect or
79 will be removed from the county before a petition can be
80 filed and temporary custody can be ordered, the worker
81 may, prior to the filing of a petition, take the child or
82 children into his or her custody without a court order:
83 *Provided*, That after taking custody of such child or
84 children prior to the filing of a petition, the worker shall
85 forthwith appear before a circuit judge or a juvenile
86 referee of the county wherein custody was taken, or if no
87 such judge or referee be available, before a circuit judge or

88 a juvenile referee of an adjoining county, and shall
89 immediately apply for an order ratifying the emergency
90 custody of the child pending the filing of a petition. The
91 circuit court of every county in the state shall appoint at
92 least one of the magistrates of the county to act as a
93 juvenile referee, who shall serve at the will and pleasure
94 of the appointing court, and who shall perform the
95 functions prescribed for such position by the provisions of
96 this subsection. The parents, guardians or custodians of
97 the child or children may be present at the time and place
98 of application for an order ratifying custody, and if at the
99 time the child or children are taken into custody by the
100 worker, the worker knows which judge or referee is to
101 receive the application, the worker shall so inform the
102 parents, guardians or custodians. The application for
103 emergency custody may be on forms prescribed by the
104 supreme court of appeals or prepared by the prosecuting
105 attorney or the applicant, and shall set forth facts from
106 which it may be determined that the probable cause
107 described above in this subsection exists. Upon such
108 sworn testimony or other evidence as the judge or referee
109 deems sufficient, the judge or referee may order the
110 emergency taking by the worker to be ratified. If appro-
111 priate under the circumstances, the order may include
112 authorization for an examination as provided for in
113 subsection (b), section four of this article. If a referee
114 issues such an order, the referee shall by telephonic
115 communication have such order orally confirmed by a
116 circuit judge of the circuit or an adjoining circuit who
117 shall on the next judicial day enter an order of confirma-
118 tion. If the emergency taking is ratified by the judge or
119 referee, emergency custody of the child or children shall
120 be vested in the department until the expiration of the
121 next two judicial days, at which time any such child taken
122 into emergency custody shall be returned to the custody of
123 his or her parent or guardian or custodian unless a peti-
124 tion has been filed and custody of the child has been
125 transferred under the provisions of section three of this

126 article.

127 (d) For purposes of the court's consideration of tempo-
128 rary custody pursuant to the provisions of subsection (a)
129 or (b) of this section, the department is not required to
130 make reasonable efforts to preserve the family if the court
131 determines:

132 (1) The parent has subjected the child to aggravated
133 circumstances which include, but are not limited to,
134 abandonment, torture, chronic abuse and sexual abuse;

135 (2) The parent has:

136 (A) Committed murder of another child of the parent;

137 (B) Committed voluntary manslaughter of another child
138 of the parent;

139 (C) Attempted or conspired to commit such a murder or
140 voluntary manslaughter or been an accessory before or
141 after the fact to either such crime; or

142 (D) Committed unlawful or malicious wounding that
143 results in serious bodily injury to the child or to another
144 child of the parent; or

145 (3) The parental rights of the parent to a sibling have
146 been terminated involuntarily.

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

1 (a) Following a determination pursuant to section two of
2 this article wherein the court finds a child to be abused or
3 neglected, the department shall file with the court a copy
4 of the child's case plan, including the permanency plan for
5 the child. The term case plan means a written document
6 that includes, where applicable, the requirements of the
7 family case plan as provided for in section three, article
8 six-d of this chapter and that also includes at least the
9 following: A description of the type of home or institution
10 in which the child is to be placed, including a discussion
11 of the appropriateness of the placement and how the

12 agency which is responsible for the child plans to assure
13 that the child receives proper care and that services are
14 provided to the parents, child and foster parents in order
15 to improve the conditions in the parent(s) home, facilitate
16 return of the child to his or her own home or the perma-
17 nent placement of the child, and address the needs of the
18 child while in foster care, including a discussion of the
19 appropriateness of the services that have been provided to
20 the child. The term permanency plan refers to that part of
21 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. Reasonable efforts to place
26 a child for adoption or with a legal guardian may be made
27 at the same time reasonable efforts are made to prevent
28 removal or to make it possible for a child to safely return
29 home. If reunification is not the permanency plan for the
30 child, the plan must state why reunification is not appro-
31 priate and detail the alternative placement for the child to
32 include approximate time lines for when such placement
33 is expected to become a permanent placement. This case
34 plan shall serve as the family case plan for parents of
35 abused or neglected children. Copies of the child's case
36 plan shall be sent to the child's attorney and parent,
37 guardian or custodian or their counsel at least five days
38 prior to the dispositional hearing. The court shall forth-
39 with proceed to disposition giving both the petitioner and
40 respondents an opportunity to be heard. The court shall
41 give precedence to dispositions in the following sequence:

42 (1) Dismiss the petition;

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

46 (3) Return the child to his or her own home under
47 supervision of the department;

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

53 (5) Upon a finding that the abusing parent or parents are
54 presently unwilling or unable to provide adequately for
55 the child's needs, commit the child temporarily to the
56 custody of the state department, a licensed private child
57 welfare agency or a suitable person who may be appointed
58 guardian by the court. The court order shall state: (1)
59 That continuation in the home is contrary to the best
60 interests of the child and why; (2) whether or not the
61 department has made reasonable efforts, with the child's
62 health and safety being the paramount concern, to pre-
63 serve the family and to prevent or eliminate the need for;
64 removing the child from the child's home and to make it
65 possible for the child to safely return home; what efforts
66 were made or that the emergency situation made such
67 efforts unreasonable or impossible; and (3) the specific
68 circumstances of the situation which made such efforts
69 unreasonable if services were not offered by the depart-
70 ment. The court order shall also determine under what
71 circumstances the child's commitment to the department
72 shall continue. Considerations pertinent to the determina-
73 tion include whether the child should: (1) Be continued in
74 foster care for a specified period; (2) be considered for
75 adoption; (3) because of a child's special needs or circum-
76 stances, be continued in foster care on a permanent or
77 long-term basis; or (4) be continued in foster care until
78 reunification is achieved. The court may order services to
79 meet the special needs of the child. Whenever the court
80 transfers custody of a youth to the department, an appro-
81 priate order of financial support by the parents or guard-
82 ians shall be entered in accordance with section five,
83 article seven of this chapter; or

84 (6) Upon a finding that there is no reasonable likelihood

85 that the conditions of neglect or abuse can be substan-
86 tially corrected in the near future, and when necessary for
87 the welfare of the child, terminate the parental, custodial
88 or guardianship rights and/or responsibilities of the
89 abusing parent and commit the child to the permanent
90 sole custody of the nonabusing parent, if there be one, or,
91 if not, to either the permanent guardianship of the depart-
92 ment or a licensed child welfare agency. If the court shall
93 so find, then in fixing its dispositional order, the court
94 shall consider the following factors: (1) The child's need
95 for continuity of care and caretakers; (2) the amount of
96 time required for the child to be integrated into a stable
97 and permanent home environment; and (3) other factors as
98 the court considers necessary and proper. Notwithstand-
99 ing any other provision of this article, the court shall give
100 consideration to the wishes of a child fourteen years of age
101 or older or otherwise of an age of discretion as determined
102 by the court, regarding the permanent termination of
103 parental rights. No adoption of a child shall take place
104 until all proceedings for termination of parental rights
105 under this article and appeals thereof are final. In deter-
106 mining whether or not parental rights should be termi-
107 nated, the court shall consider the efforts made by the
108 department to provide remedial and reunification services
109 to the parent. The court order shall state: (1) That
110 continuation in the home is not in the best interest of the
111 child and why; (2) why reunification is not in the best
112 interests of the child; (3) whether or not the department
113 made reasonable efforts, with the child's health and safety
114 being the paramount concern, to preserve the family and
115 to prevent the placement or to eliminate the need for
116 removing the child from the child's home and to make it
117 possible for the child to safely return home, or that the
118 emergency situation made such efforts unreasonable or
119 impossible; and (4) whether or not the department made
120 reasonable efforts to preserve and reunify the family
121 including a description of what efforts were made or that
122 such efforts were unreasonable due to specific circum-

123 stances.

124 (7) For purposes of the court's consideration of the
125 disposition custody of a child pursuant to the provisions
126 of this subsection the department is not required to make
127 reasonable efforts to preserve the family if the court
128 determines:

129 (A) The parent has subjected the child to aggravated
130 circumstances which include, but are not limited to,
131 abandonment, torture, chronic abuse and sexual abuse;

132 (B) The parent has:

133 (i) Committed murder of another child of the parent;

134 (ii) Committed voluntary manslaughter of another child
135 of the parent;

136 (iii) Attempted or conspired to commit such a murder or
137 voluntary manslaughter or been an accessory before or
138 after the fact to either such crime; or

139 (iv) Committed a felonious assault that results in serious
140 bodily injury to the child or to another child of the parent;
141 or

142 (C) The parental rights of the parent to a sibling have
143 been terminated involuntarily.

144 (b) As used in this section, "no reasonable likelihood that
145 conditions of neglect or abuse can be substantially cor-
146 rected" shall mean that, based upon the evidence before
147 the court, the abusing adult or adults have demonstrated
148 an inadequate capacity to solve the problems of abuse or
149 neglect, on their own or with help. Such conditions shall
150 be deemed to exist in the following circumstances, which
151 shall not be exclusive:

152 (1) The abusing parent or parents have habitually
153 abused or are addicted to alcohol, controlled substances or
154 drugs, to the extent that proper parenting skills have been
155 seriously impaired and such person or persons have not

156 responded to or followed through the recommended and
157 appropriate treatment which could have improved the
158 capacity for adequate parental functioning;

159 (2) The abusing parent or parents have willfully refused
160 or are presently unwilling to cooperate in the development
161 of a reasonable family case plan designed to lead to the
162 child's return to their care, custody and control;

163 (3) The abusing parent or parents have not responded to
164 or followed through with a reasonable family case plan or
165 other rehabilitative efforts of social, medical, mental
166 health or other rehabilitative agencies designed to reduce
167 or prevent the abuse or neglect of the child, as evidenced
168 by the continuation or insubstantial diminution of condi-
169 tions which threatened the health, welfare or life of the
170 child;

171 (4) The abusing parent or parents have abandoned the
172 child;

173 (5) The abusing parent or parents have repeatedly or
174 seriously injured the child physically or emotionally, or
175 have sexually abused or sexually exploited the child, and
176 the degree of family stress and the potential for further
177 abuse and neglect are so great as to preclude the use of
178 resources to mitigate or resolve family problems or assist
179 the abusing parent or parents in fulfilling their responsi-
180 bilities to the child; or

181 (6) The abusing parent or parents have incurred emo-
182 tional illness, mental illness or mental deficiency of such
183 duration or nature as to render such parent or parents
184 incapable of exercising proper parenting skills or suffi-
185 ciently improving the adequacy of such skills.

186 (c) The court may as an alternative disposition allow the
187 parents or custodians an improvement period not to
188 exceed six months. During this period the court shall
189 require the parent to rectify the conditions upon which the
190 determination was based. The court may order the child

191 to be placed with the parents, or any person found to be a
192 fit and proper person for the temporary care of the child
193 during the period. At the end of the period the court shall
194 hold a hearing to determine whether the conditions have
195 been adequately improved, and at the conclusion of such
196 hearing, shall make a further dispositional order in
197 accordance with this section.

§49-6-5a. Permanency hearing when court determines reasonable efforts to preserve families not required.

1 (a) If the court finds, pursuant to the provisions of
2 subdivision (7), subsection (a), section five of this article
3 that the department is not required to make reasonable
4 efforts to preserve the family, then notwithstanding any
5 other provision, a permanency hearing must be held
6 within thirty days following the entry of the court order so
7 finding.

8 (b) The purpose of the permanency hearing is to deter-
9 mine the permanency plan for the child that includes: (1)
10 When the child will be returned to the parent; (2) when the
11 child will be placed for adoption, in which event the state
12 will file a petition for termination of parental rights; or (3)
13 when the child will be referred for legal guardianship. In
14 cases where the department has demonstrated a compel-
15 ling reason for determining it would not be in the best
16 interests of the child to return home, the court shall
17 determine whether the child should be referred for
18 termination of parental rights, be placed for adoption, be
19 placed with a fit and willing relative, be placed with a
20 legal guardian or placed in another planned permanent
21 living arrangement.

22 (c) Any foster parent, preadoptive parent or relative
23 providing care for the child shall be given notice of and
24 the opportunity to be heard at the permanency hearing
25 provided for in this section.

§49-6-5b. When efforts to terminate parental rights required.

1 (a) Except as provided in subsection (b) of this section,
2 the department shall file or join in a petition or otherwise
3 seek a ruling in any pending proceeding to terminate
4 parental rights:

5 (1) If a child has been in foster care for fifteen of the
6 most recent twenty-two months as determined by the
7 earlier of the date of the first judicial finding that the
8 child is subjected to abuse or neglect or the date which is
9 sixty days after the child is removed from the home;

10 (2) If a court has determined the child is abandoned; or

11 (3) If a court has determined the parent has committed
12 murder or voluntary manslaughter of another of his or her
13 children; has attempted or conspired to commit such
14 murder or voluntary manslaughter or has been an acces-
15 sory before or after the fact of either crime; has committed
16 unlawful or malicious wounding resulting in serious
17 bodily injury to the child or to another of his or her
18 children; or the parental rights of the parent to a sibling
19 have been terminated involuntarily.

20 (b) The department may determine not to file a petition
21 to terminate parental rights when:

22 (1) At the option of the department, the child has been
23 placed with a relative;

24 (2) The department has documented in the case plan
25 made available for court review a compelling reason,
26 including, but not limited to, the child's age and prefer-
27 ence regarding termination or the child's placement in
28 custody of the department based on any proceedings
29 initiated under article five of this chapter, that filing the
30 petition would not be in the best interests of the child; or

31 (3) The department has not provided, when reasonable
32 efforts to return a child to the family are required, the
33 services to the child's family as the department deems
34 necessary for the safe return of the child to the home.

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

1 (a) If, twelve months after receipt by the department or
2 its authorized agent of physical custody of a child either
3 by a court ordered placement or by a voluntary agreement,
4 the department has not placed a child in permanent foster
5 care or an adoptive home or placed the child with a
6 natural parent, the department shall file with the court a
7 petition for review of the case. The department shall also
8 file with the court a report detailing the efforts that have
9 been made to place the child in a permanent home and
10 copies of the child's case plan including the permanency
11 plan as defined in section five, article six of this chapter.
12 Copies of the report shall be sent to the child's attorney
13 and be made available to the child's parent(s) or guardian.
14 "Permanent foster care" shall mean a written arrangement
15 with an adult or adults following a six-month trial period
16 whereby the state department places the care, custody and
17 control of a child until the child's emancipation with such
18 adult or adults. The court shall schedule a hearing in
19 chambers, giving notice and the right to be present to:
20 The child's attorney; the child, if twelve years of age or
21 older; the child's parents; the child's guardians; the child's
22 foster parents; any preadoptive parent or any relative
23 providing care for the child; and such other persons as the
24 court may in its discretion direct. The child's presence
25 may be waived by the child's attorney at the request of the
26 child or if the child would suffer emotional harm. The
27 purpose of the hearing is to review the child's case, to
28 determine whether and under what conditions the child's
29 commitment to the department shall continue, and to
30 determine what efforts are necessary to provide the child
31 with a permanent home. At the conclusion of the hearing
32 the court shall in accordance with the best interests of the
33 child enter an appropriate order of disposition. The court
34 order shall state: (1) Whether or not the department made
35 reasonable efforts to preserve the family and to prevent
36 out-of-home placement or that the specific situation made

37 such effort unreasonable; (2) the permanency plan for the
38 child; and (3) services required to meet the child's needs:
39 *Provided*, That the department is not required to make
40 reasonable efforts to preserve the family if the court
41 determines any of the conditions set forth in subdivision
42 (7), subsection (a), section five of this article exist. The
43 court shall possess continuing jurisdiction over cases
44 reviewed under this section for so long as a child remains
45 in temporary foster care, or, when a child is returned to
46 his or her natural parents subject to conditions imposed by
47 the court, for so long as the conditions are effective.

48 (b) The state department shall file a supplementary
49 petition for review with the court within twelve months
50 and every twelve months thereafter for every child that
51 remains in the physical or legal custody of the state
52 department until the child is placed in an adoptive home
53 or permanent foster care or returned to his or her parents.

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

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

70 (e) The state department shall notify, in writing, the
71 court, the child, if over the age of twelve, the child's
72 attorney, the parents and the parents' attorney forty-eight

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

86 (f) Nothing in this article precludes any party from
87 petitioning the court for review of the child's case at any
88 time. The court shall grant such petition upon a showing
89 that there is a change in circumstance or needs of the child
90 that warrants court review.

ARTICLE 6D. WEST VIRGINIA CHILD PROTECTIVE SERVICES ACT.

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

1 (a) The department shall develop a family case plan for
2 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
9 organization. The family case plan is to clearly set forth
10 an organized, realistic method of identifying family
11 problems and the logical steps to be used in resolving or
12 lessening those problems. Every family case plan prepared
13 by the department shall contain the following:

14 (1) A listing of specific, measurable, realistic goals to be
15 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
21 or 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, including time-limited reunifi-
26 cation services as defined in section three, article one of
27 this chapter, which will be provided;
- 28 (7) Time targets for the achievement of goals or portions
29 of goals;
- 30 (8) An assignment of tasks to the abusing or neglecting
31 parent, guardian or custodian, to the caseworker or
32 caseworkers and to other participants in the planning
33 process;
- 34 (9) A designation of when and how often tasks will be
35 performed; and
- 36 (10) The safety of the placement of the child and plans
37 for returning the child safely home.
- 38 (b) In cases where the family has been referred to the
39 department by a court under the provisions of this chap-
40 ter, and further action before the court is pending, the
41 family case plan described in subsection (a) of this section
42 shall be furnished to the court within thirty days after the
43 entry of the order referring the case to the department,
44 and shall be available to counsel for the parent, guardian
45 or custodian and counsel for the child or children. The
46 department shall encourage participation in the develop-
47 ment of the family case plan by the parent, guardian or
48 custodian, and, if the child is above the age of twelve years

49 and the child's participation is otherwise appropriate, by
50 the child. It shall be the duty of counsel for the partici-
51 pants to participate in the development of the family case
52 plan. The family case plan may be modified from time to
53 time by the department to allow for flexibility in goal
54 development, and in each such case the modifications
55 shall be submitted to the court in writing. Reasonable
56 efforts to place a child for adoption or with a legal guard-
57 ian may be made at the same time as reasonable efforts
58 are being made to prevent removal or to make it possible
59 for a child to return safely home. The court shall examine
60 the proposed family case plan or any modification thereof,
61 and upon a finding by the court that the plan or modified
62 plan can be easily communicated, explained and discussed
63 so as to make the participants accountable and able to
64 understand the reasons for any success or failure under
65 the plan, the court shall inform the participants of the
66 probable action of the court if goals are met or not met.

67 (c) (1) In addition to the family case plan provided for
68 under the provisions of subsection (b) of this section, the
69 department shall prepare, as an appendix to the family
70 case plan, an expanded "worker's case plan". As utilized
71 by the department under the provisions of this section, the
72 worker's case plan shall consist of the following:

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

75 (B) A prognosis for each of the goals projected in the
76 family case plan, assessing the capacity of the parent,
77 guardian or custodian to achieve the goal and whether
78 available treatment services are likely to have the desired
79 outcome;

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

82 (D) A description of when and how the department will
83 decide when and how well each goal has been attained;

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

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

89 (2) Because the nature of the information contained in
90 the worker's case plan described in subdivision (1) of this
91 subsection may, in some cases, be construed to be negative
92 with respect to the probability of change, or may be
93 viewed as a caseworker's attempt to impose personal
94 values into the situation, or may raise barriers of hostility
95 and resistance between the caseworker and the family
96 members, the worker's case plan shall not be made
97 available to the court or to persons outside of the depart-
98 ment, but shall be used by the department for the purpose
99 of confirming the effectiveness of the family case plan or
100 for determining that changes in the family case plan need
101 to be made.

102 (d) In furtherance of the provisions of this article, the
103 department shall, within the limits of available funds,
104 establish programs and services for the following pur-
105 poses:

106 (1) For the development and establishment of training
107 programs for professional and paraprofessional personnel
108 in the fields of medicine, law, education, social work and
109 other relevant fields who are engaged in, or intend to work
110 in, the field of the prevention, identification and treatment
111 of child abuse and neglect; and training programs for
112 children, and for persons responsible for the welfare of
113 children, in methods of protecting children from child
114 abuse and neglect;

115 (2) For the establishment and maintenance of centers,
116 serving defined geographic areas, staffed by
117 multidisciplinary teams and community teams of person-
118 nel trained in the prevention, identification, and treatment

119 of child abuse and neglect cases, to provide a broad range
120 of services related to child abuse and neglect, including
121 direct support and supervision of satellite centers and
122 attention homes, as well as providing advice and consulta-
123 tion to individuals, agencies and organizations which
124 request such services;

125 (3) For furnishing services of multidisciplinary teams
126 and community teams, trained in the prevention, identifi-
127 cation and treatment of child abuse and neglect cases, on
128 a consulting basis to small communities where such
129 services are not available;

130 (4) For other innovative programs and projects that
131 show promise of successfully identifying, preventing or
132 remedying the causes of child abuse and neglect, includ-
133 ing, but not limited to, programs and services designed to
134 improve and maintain parenting skills, programs and
135 projects for parent self-help, and for prevention and
136 treatment of drug-related child abuse and neglect; and

137 (5) Assisting public agencies or nonprofit private
138 organizations or combinations thereof in making applica-
139 tions for grants from, or in entering into contracts with,
140 the secretary of the federal department of health and
141 human services for demonstration programs and projects
142 designed to identify, prevent and treat child abuse and
143 neglect.

144 (e) Agencies, organizations and programs funded to
145 carry out the purposes of this section shall be structured
146 so as to comply with any applicable federal law, any
147 regulation of the federal department of health and human
148 services or the secretary thereof, and any final comprehen-
149 sive plan of the federal advisory board on child abuse and
150 neglect. In funding organizations, the department shall,
151 to the extent feasible, ensure that parental organizations
152 combating child abuse and neglect receive preferential
153 treatment.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1998.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *approved* this the *6th*
April
day of, 1998.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 11:00 am