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
ENROLLED

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.

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

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

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

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

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

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

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

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

(8) Provide for early identification of the problems of children and their families, and respond appropriately with measures and services to prevent abuse and neglect or delinquency;
(9) Provide a system for the rehabilitation or detention of juvenile delinquents; and

(10) Protect the welfare of the general public.

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

(b) The child welfare service of the state shall be administered by the state department of health and human resources and the division of juvenile services of the department of military affairs and public safety.

The state department of health and human resources is designated as the agency to cooperate with the United States department of health and human services and United States department of justice in extending and improving child welfare services, to comply with regulations thereof, and to receive and expend federal funds for these services. The division of juvenile services of the department of military affairs and public safety is designated as the agency to cooperate with the United States department of health and human services and United States department of justice in operating, maintaining and improving juvenile correction facilities and centers for the predispositional detention of children, to comply with regulations thereof, and to receive and expend federal funds for these services.

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

(a) "Abused child" means a child whose health or welfare
is harmed or threatened by:

(1) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home; or

(2) Sexual abuse or sexual exploitation; or

(3) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section sixteen, article four, chapter forty-eight of this code.

In addition to its broader meaning, physical injury may include an injury to the child as a result of excessive corporal punishment.

(b) "Abusing parent" means a parent, guardian or other custodian, regardless of his or her age, whose conduct, as alleged in the petition charging child abuse or neglect, has been adjudged by the court to constitute child abuse or neglect.

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

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

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

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

(3) Preventing the unnecessary removal of children from their families by identifying family problems and assisting
families in resolving problems which could lead to a 
removal of children and a breakup of the family;

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

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

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

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

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

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

(3) Nutritional deprivation; or

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

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

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

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

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

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

(h) (1) "Neglected child" means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(B) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child's parent or custodian;

(2) "Neglected child" does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.
(i) "Parenting skills" means a parent’s competencies in providing physical care, protection, supervision and psychological support appropriate to a child’s age and state of development.

(j) "Sexual abuse" means:

(A) As to a child who is less than sixteen years of age, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse; or
(ii) Sexual intrusion; or
(iii) Sexual contact; or

(B) As to a child who is sixteen years of age or older, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse; or
(ii) Sexual intrusion; or
(iii) Sexual contact; or

(C) Any conduct whereby a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making such display, or of the child, or for the purpose of affronting or
alarming the child.

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

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

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

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

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

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

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

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

(q) "Serious physical abuse" means bodily injury which creates a substantial risk of death, which causes serious or
prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

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

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

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


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

7 The department of health and human resources is hereby authorized and empowered to provide care, support and protective services for children who are handicapped by dependency, neglect, single parent status, mental or physical disability, or who for other reasons are in need of public service. Such department is also hereby authorized and empowered in its discretion to accept children for care from their parent or parents, guardian, custodian or
relatives and to accept the custody of children committed
to its care by courts. The department of health and human
resources or any county office of such department is also
hereby authorized and empowered in its discretion to
accept temporary custody of children for care from any
law-enforcement officer in an emergency situation.

Within ninety days of the date of the signatures to a
voluntary placement agreement, after receipt of physical
custody, the state department of health and human
resources shall file with the court a petition for review of
the placement, stating the child’s situation and the
circumstance that gives rise to the voluntary placement.
If the department intends to extend the voluntary place-
ment agreement, the department shall file with the court
a copy of the child’s case plan. The court shall appoint an
attorney for the child, who shall also receive a copy of the
case plan. The court shall schedule a hearing and shall
give notice of the time and place and right to be present at
such hearing to: The child’s attorney; the child, if twelve
years of age or older; the child’s parents or guardians; the
child’s foster parents; any preadoptive parent or relative
providing care for the child; and any other such persons as
the court may in its discretion direct. The child’s presence
at such hearing may be waived by the child’s attorney at
the request of the child or if the child would suffer emo-
tional harm. At the conclusion of the proceedings, but no
later than ninety days after the date of the signatures to
the voluntary placement agreement, the court shall enter
an order determining whether or not continuation of the
voluntary placement is in the best interests of the child;
specifying under what conditions the child’s placement
shall continue; and specifying whether or not the depart-
ment is required to and has made reasonable efforts to
preserve and to reunify the family, as set forth in subsec-
tion (d), section three, article six of this chapter and/or
provide a plan for the permanent placement of the child.
§49-2-17. Subsidized adoption and legal guardianship.

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

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

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

1. They have a physical or mental disability;
2. They are emotionally disturbed; or
3. They are older children; or
4. They are a part of a sibling group; or
5. They are a member of a racial or ethnic minority; or
6. They have any combination of these conditions.

The department shall provide assistance in the form of subsidies or other services to parents who are found and approved for adoption or legal guardianship of a child certified as eligible for subsidy by the department, but before the final decree of adoption or order of legal guardianship is entered, there must be a written agreement between the family entering into the subsidized adoption or legal guardianship and the department. Adoption or legal guardianship subsidies in individual cases may commence with the adoption or legal guardianship placement, and will vary with the needs of the child as well as the availability of other resources to meet the child's needs. The subsidy may be for special services
only, or for money payments, and either for a limited period, or for a long term, or for any combination of the foregoing. The specific financial terms of the subsidy shall be included in the agreement between the department and the adoptive parents or legal guardians. The amount of the time-limited or long-term subsidy may in no case exceed that which would be allowable from time to time for such child under foster family care, or, in the case of a special service, the reasonable fee for the service rendered. In addition, the department shall provide either medicaid or other health insurance coverage for any special needs child for whom there is an adoption or legal guardianship assistance agreement between the department and the adoptive parent or legal guardian and who the department determines cannot be placed with an adoptive parent or legal guardian without medical assistance because the child has special needs for medical, mental health or rehabilitative care.

Whenever significant emotional ties have been established between a child and his foster parents, and the foster parents seek to adopt the child or to become legal guardians, the child shall be certified as eligible for a subsidy conditioned upon his adoption or his becoming a ward of a legal guardian under applicable procedures by the foster parents.

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

If the child is the dependent of a voluntary licensed child-placing agency, that agency shall present to the department evidence of significant emotional ties between the child and his foster parents or evidence of inability to place the child for adoption. In no event shall the value of the services and assistance provided by the department
under an agreement pursuant to this section exceed the value of assistance available to foster families in similar circumstances. All records regarding subsidized adoptions or legal guardianships shall be held in confidence, however, records regarding the payment of public funds for subsidized adoptions or legal guardianships shall be available for public inspection provided they do not directly or indirectly identify any child or persons receiving 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.

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

(b) The petition and notice of the hearing shall be served upon both parents and any other custodian, giving to such parents or custodian at least ten days' notice. Notice shall also be given to the department, any foster or preadoptive parent, and any relative providing care for the child. In cases wherein personal service within West Virginia
cannot be obtained after due diligence upon any parent or
other custodian, a copy of the petition and notice of the
hearing shall be mailed to such person by certified mail,
addressee only, return receipt requested, to the last known
address of such person. If said person signs the certificate,
service shall be complete and said certificate shall be filed
as proof of said service with the clerk of the circuit court.
If service cannot be obtained by personal service or by
certified mail, notice shall be by publication as a Class II
legal advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code. A notice of
hearing shall specify the time and place of the hearing, the
right to counsel of the child and parents or other custodi-
ans at every stage of the proceedings and the fact that
such proceedings can result in the permanent termination
of the parental rights. Failure to object to defects in the
petition and notice shall not be construed as a waiver.

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

(a) Upon the filing of a petition, the court may order that
the child alleged to be an abused or neglected child be
delivered for not more than ten days into the custody of
the state department or a responsible person found by the
court to be a fit and proper person for the temporary care
of the child pending a preliminary hearing, if it finds that:
(1) There exists imminent danger to the physical well-
being of the child; and (2) there are no reasonably avail-
able alternatives to removal of the child, including, but
not limited to, the provision of medical, psychiatric,
psychological or homemaking services in the child's
present custody: Provided, That where the alleged
abusing person, if known, is a member of a household, the
court shall not allow placement pursuant to this section of
the child or children in said home unless the alleged
abusing person is or has been precluded from visiting or
residing in said home by judicial order. In a case where
there is more than one child in the home, or in the tempo-
rary care, custody or control of the alleged offending
parent, the petition shall so state, and notwithstanding the
fact that the allegations of abuse or neglect may pertain to
less than all of such children, each child in the home for
whom relief is sought shall be made a party to the pro-
ceeding. Even though the acts of abuse or neglect alleged
in the petition were not directed against a specific child
who is named in the petition, the court shall order the
removal of such child, pending final disposition, if it finds
that there exists imminent danger to the physical well-
being of the child and a lack of reasonable available
alternatives to removal. The initial order directing such
custody shall contain an order appointing counsel and
scheduling the preliminary hearing, and upon its service
shall require the immediate transfer of custody of such
child or children to the department or a responsible
relative which may include any parent, guardian, or other
custodian. The court order shall state: (1) That continua-
tion in the home is contrary to the best interests of the
child and why; and (2) whether or not the department
made reasonable efforts to preserve the family and
prevent the placement or that the emergency situation
made such efforts unreasonable or impossible. The order
may also direct any party or the department to initiate or
become involved in services to facilitate reunification of
the family.

(b) Whether or not the court orders immediate transfer
of custody as provided in subsection (a) of this section, if
the facts alleged in the petition demonstrate to the court
that there exists imminent danger to the child, the court
may schedule a preliminary hearing giving the respon-
dents at least five days' actual notice. If the court finds at
the preliminary hearing that there are no alternatives less
drastic than removal of the child and that a hearing on the
petition cannot be scheduled in the interim period, the
court may order that the child be delivered into the
temporary custody of the department or a responsible
person or agency found by the court to be a fit and proper
person for the temporary care of the child for a period not
exceeding sixty days: Provided, That the court order shall
state: (1) That continuation in the home is contrary to the
best interests of the child and set forth the reasons there-
for; (2) whether or not the department made reasonable
efforts to preserve the family and to prevent the child’s
removal from his or her home; (3) whether or not the
department made reasonable efforts to preserve the family
and to prevent the placement or that the emergency
situation made such efforts unreasonable or impossible;
and (4) what efforts should be made by the department, if
any, to facilitate the child’s return home: Provided,
however, That if the court grants an improvement period
as provided in section twelve of this article, the sixty-day
limit upon temporary custody is waived.

(c) If a child or children shall, in the presence of a child
protective service worker, be in an emergency situation
which constitutes an imminent danger to the physical
well-being of the child or children, as that phrase is
defined in section three, article one of this chapter, and if
such worker has probable cause to believe that the child
or children will suffer additional child abuse or neglect or
will be removed from the county before a petition can be
filed and temporary custody can be ordered, the worker
may, prior to the filing of a petition, take the child or
children into his or her custody without a court order:
Provided, That after taking custody of such child or
children prior to the filing of a petition, the worker shall
forthwith appear before a circuit judge or a juvenile
referee of the county wherein custody was taken, or if no
such judge or referee be available, before a circuit judge or
a juvenile referee of an adjoining county, and shall
immediately apply for an order ratifying the emergency
custody of the child pending the filing of a petition. The
circuit court of every county in the state shall appoint at
least one of the magistrates of the county to act as a
juvenile referee, who shall serve at the will and pleasure
of the appointing court, and who shall perform the
functions prescribed for such position by the provisions of
this subsection. The parents, guardians or custodians of
the child or children may be present at the time and place
of application for an order ratifying custody, and if at the
time the child or children are taken into custody by the
worker, the worker knows which judge or referee is to
receive the application, the worker shall so inform the
parents, guardians or custodians. The application for
emergency custody may be on forms prescribed by the
supreme court of appeals or prepared by the prosecuting
attorney or the applicant, and shall set forth facts from
which it may be determined that the probable cause
described above in this subsection exists. Upon such
sworn testimony or other evidence as the judge or referee
deems sufficient, the judge or referee may order the
emergency taking by the worker to be ratified. If appro-
priate under the circumstances, the order may include
authorization for an examination as provided for in
subsection (b), section four of this article. If a referee
issues such an order, the referee shall by telephonic
communication have such order orally confirmed by a
circuit judge of the circuit or an adjoining circuit who
shall on the next judicial day enter an order of confirma-
tion. If the emergency taking is ratified by the judge or
referee, emergency custody of the child or children shall
be vested in the department until the expiration of the
next two judicial days, at which time any such child taken
into emergency custody shall be returned to the custody of
his or her parent or guardian or custodian unless a peti-
tion has been filed and custody of the child has been
transferred under the provisions of section three of this
(d) For purposes of the court's consideration of temporary custody pursuant to the provisions of subsection (a) or (b) of this section, the department is not required to make reasonable efforts to preserve the family if the court determines:

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

(2) The parent has:
   (A) Committed murder of another child of the parent;
   (B) Committed voluntary manslaughter of another child of the parent;
   (C) Attempted or conspired to commit such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime; or
   (D) Committed unlawful or malicious wounding that results in serious bodily injury to the child or to another child of the parent; or

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

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

(a) Following a determination pursuant to section two of this article wherein the court finds a child to be abused or neglected, the department shall file with the court a copy of the child's case plan, including the permanency plan for the child. The term case plan means a written document that includes, where applicable, the requirements of the family case plan as provided for in section three, article six-d of this chapter and that also includes at least the following: A description of the type of home or institution in which the child is to be placed, including a discussion of the appropriateness of the placement and how the
agency which is responsible for the child plans to assure
that the child receives proper care and that services are
provided to the parents, child and foster parents in order
to improve the conditions in the parent(s) home, facilitate
return of the child to his or her own home or the perma-
nent placement of the child, and address the needs of the
child while in foster care, including a discussion of the
appropriateness of the services that have been provided to
the child. The term permanency plan refers to that part of
the case plan which is designed to achieve a permanent
home for the child in the least restrictive setting available.
The plan must document efforts to ensure that the child is
returned home within approximate time lines for reunifi-
cation as set out in the plan. Reasonable efforts to place
a child for adoption or with a legal guardian may be made
at the same time reasonable efforts are made to prevent
removal or to make it possible for a child to safely return
home. If reunification is not the permanency plan for the
child, the plan must state why reunification is not appro-
piate and detail the alternative placement for the child to
include approximate time lines for when such placement
is expected to become a permanent placement. This case
plan shall serve as the family case plan for parents of
abused or neglected children. Copies of the child's case
plan shall be sent to the child's attorney and parent,
guardian or custodian or their counsel at least five days
prior to the dispositional hearing. The court shall forth-
with proceed to disposition giving both the petitioner and
respondents an opportunity to be heard. The court shall
give precedence to dispositions in the following sequence:

(1) Dismiss the petition;

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

(3) Return the child to his or her own home under
supervision of the department;
(4) Order terms of supervision calculated to assist the child and any abusing parent or parents or custodian which prescribe the manner of supervision and care of the child and which are within the ability of any parent or parents or custodian to perform;

(5) Upon a finding that the abusing parent or parents are presently unwilling or unable to provide adequately for the child’s needs, commit the child temporarily to the custody of the state department, a licensed private child welfare agency or a suitable person who may be appointed guardian by the court. The court order shall state: (1) That continuation in the home is contrary to the best interests of the child and why; (2) whether or not the department has made reasonable efforts, with the child’s health and safety being the paramount concern, to preserve the family and to prevent or eliminate the need for; removing the child from the child’s home and to make it possible for the child to safely return home; what efforts were made or that the emergency situation made such efforts unreasonable or impossible; and (3) the specific circumstances of the situation which made such efforts unreasonable if services were not offered by the department. The court order shall also determine under what circumstances the child’s commitment to the department shall continue. Considerations pertinent to the determination include whether the child should: (1) Be continued in foster care for a specified period; (2) be considered for adoption; (3) because of a child’s special needs or circumstances, be continued in foster care on a permanent or long-term basis; or (4) be continued in foster care until reunification is achieved. The court may order services to meet the special needs of the child. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with section five, article seven of this chapter; or

(6) Upon a finding that there is no reasonable likelihood
that the conditions of neglect or abuse can be substantially corrected in the near future, and when necessary for the welfare of the child, terminate the parental, custodial or guardianship rights and/or responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the department or a licensed child welfare agency. If the court shall so find, then in fixing its dispositional order, the court shall consider the following factors: (1) The child’s need for continuity of care and caretakers; (2) the amount of time required for the child to be integrated into a stable and permanent home environment; and (3) other factors as the court considers necessary and proper. Notwithstanding any other provision of this article, the court shall give consideration to the wishes of a child fourteen years of age or older or otherwise of an age of discretion as determined by the court, regarding the permanent termination of parental rights. No adoption of a child shall take place until all proceedings for termination of parental rights under this article and appeals thereof are final. In determining whether or not parental rights should be terminated, the court shall consider the efforts made by the department to provide remedial and reunification services to the parent. The court order shall state: (1) That continuation in the home is not in the best interest of the child and why; (2) why reunification is not in the best interests of the child; (3) whether or not the department made reasonable efforts, with the child’s health and safety being the paramount concern, to preserve the family and to prevent the placement or to eliminate the need for removing the child from the child’s home and to make it possible for the child to safely return home, or that the emergency situation made such efforts unreasonable or impossible; and (4) whether or not the department made reasonable efforts to preserve and reunify the family including a description of what efforts were made or that such efforts were unreasonable due to specific circum-
(7) For purposes of the court’s consideration of the
disposition custody of a child pursuant to the provisions
of this subsection the department is not required to make
reasonable efforts to preserve the family if the court
determines:

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

(B) The parent has:

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

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

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

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

or

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

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

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

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

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

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

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

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

(c) The court may as an alternative disposition allow the
parents or custodians an improvement period not to
exceed six months. During this period the court shall
require the parent to rectify the conditions upon which the
determination was based. The court may order the child
to be placed with the parents, or any person found to be a fit and proper person for the temporary care of the child during the period. At the end of the period the court shall hold a hearing to determine whether the conditions have been adequately improved, and at the conclusion of such hearing, shall make a further dispositional order in accordance with this section.

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

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

(b) The purpose of the permanency hearing is to determine the permanency plan for the child that includes: (1) When the child will be returned to the parent; (2) when the child will be placed for adoption, in which event the state will file a petition for termination of parental rights; or (3) when the child will be referred for legal guardianship. In cases where the department has demonstrated a compelling reason for determining it would not be in the best interests of the child to return home, the court shall determine whether the child should be referred for termination of parental rights, be placed for adoption, be placed with a fit and willing relative, be placed with a legal guardian or placed in another planned permanent living arrangement.

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

§49-6-5b. When efforts to terminate parental rights required.
(a) Except as provided in subsection (b) of this section, the department shall file or join in a petition or otherwise seek a ruling in any pending proceeding to terminate parental rights:

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

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

(3) If a court has determined the parent has committed murder or voluntary manslaughter of another of his or her children; has attempted or conspired to commit such murder or voluntary manslaughter or has been an accessory before or after the fact of either crime; has committed unlawful or malicious wounding resulting in serious bodily injury to the child or to another of his or her children; or the parental rights of the parent to a sibling have been terminated involuntarily.

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

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

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

(3) The department has not provided, when reasonable efforts to return a child to the family are required, the services to the child’s family as the department deems necessary for the safe return of the child to the home.
§49-6-8. Foster care review; annual reports to the court.

(a) If, twelve months after receipt by the department or its authorized agent of physical custody of a child either by a court ordered placement or by a voluntary agreement, the department has not placed a child in permanent foster care or an adoptive home or placed the child with a natural parent, the department shall file with the court a petition for review of the case. The department shall also file with the court a report detailing the efforts that have been made to place the child in a permanent home and copies of the child's case plan including the permanency plan as defined in section five, article six of this chapter. Copies of the report shall be sent to the child's attorney and be made available to the child's parent(s) or guardian. “Permanent foster care” shall mean a written arrangement with an adult or adults following a six-month trial period whereby the state department places the care, custody and control of a child until the child's emancipation with such adult or adults. The court shall schedule a hearing in chambers, giving notice and the right to be present to: The child's attorney; the child, if twelve years of age or older; the child's parents; the child's guardians; the child's foster parents; any preadoptive parent or any relative providing care for the child; and such other persons as the court may in its discretion direct. The child's presence may be waived by the child's attorney at the request of the child or if the child would suffer emotional harm. The purpose of the hearing is to review the child's case, to determine whether and under what conditions the child's commitment to the department shall continue, and to determine what efforts are necessary to provide the child with a permanent home. At the conclusion of the hearing the court shall in accordance with the best interests of the child enter an appropriate order of disposition. The court order shall state: (1) Whether or not the department made reasonable efforts to preserve the family and to prevent out-of-home placement or that the specific situation made
such effort unreasonable; (2) the permanency plan for the 
child; and (3) services required to meet the child’s needs: 

Provided, That the department is not required to make 
reasonable efforts to preserve the family if the court 
determines any of the conditions set forth in subdivision 
(7), subsection (a), section five of this article exist. The 
court shall possess continuing jurisdiction over cases 
reviewed under this section for so long as a child remains 
in temporary foster care, or, when a child is returned to 
his or her natural parents subject to conditions imposed by 
the court, for so long as the conditions are effective.

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

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

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

(e) The state department shall notify, in writing, the 
court, the child, if over the age of twelve, the child’s 
attorney, the parents and the parents’ attorney forty-eight
hours prior to the move if this is a planned move, or
within forty-eight hours of the next business day after the
move if this is an emergency move, except where such
notification would endanger the child or the foster family.
This notice shall not be required in any case where the
child is in imminent danger in the child's current place-
ment. The location of the child need not be disclosed, but
the purpose of the move should be. This requirement is
not waived by placement of the child in a home or other
residence maintained by a private provider. No notice
shall be provided pursuant to this provision to any parent
or parent's attorney whose parental rights have been
terminated pursuant to this article.

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

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

(1) A listing of specific, measurable, realistic goals to be
achieved;
(2) An arrangement of goals into an order of priority;

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

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

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

(6) A list of the services, including time-limited reunification services as defined in section three, article one of this chapter, which will be provided;

(7) Time targets for the achievement of goals or portions of goals;

(8) An assignment of tasks to the abusing or neglecting parent, guardian or custodian, to the caseworker or caseworkers and to other participants in the planning process;

(9) A designation of when and how often tasks will be performed; and

(10) The safety of the placement of the child and plans for returning the child safely home.

(b) In cases where the family has been referred to the department by a court under the provisions of this chapter, and further action before the court is pending, the family case plan described in subsection (a) of this section shall be furnished to the court within thirty days after the entry of the order referring the case to the department, and shall be available to counsel for the parent, guardian or custodian and counsel for the child or children. The department shall encourage participation in the development of the family case plan by the parent, guardian or custodian, and, if the child is above the age of twelve years
and the child’s participation is otherwise appropriate, by
the child. It shall be the duty of counsel for the partici-
pants to participate in the development of the family case
plan. The family case plan may be modified from time to
time by the department to allow for flexibility in goal
development, and in each such case the modifications
shall be submitted to the court in writing. Reasonable
efforts to place a child for adoption or with a legal guar-
dian may be made at the same time as reasonable efforts
are being made to prevent removal or to make it possible
for a child to return safely home. The court shall examine
the proposed family case plan or any modification thereof,
and upon a finding by the court that the plan or modified
plan can be easily communicated, explained and discussed
so as to make the participants accountable and able to
understand the reasons for any success or failure under
the plan, the court shall inform the participants of the
probable action of the court if goals are met or not met.

(c) (1) In addition to the family case plan provided for
under the provisions of subsection (b) of this section, the
department shall prepare, as an appendix to the family
case plan, an expanded “worker’s case plan”. As utilized
by the department under the provisions of this section, the
worker’s case plan shall consist of the following:

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

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

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

(D) A description of when and how the department will
decide when and how well each goal has been attained;
(E) If possible, a listing of alternative methods and specific services which the caseworker or caseworkers may consider using if the original plan does not work; and

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

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

(d) In furtherance of the provisions of this article, the department shall, within the limits of available funds, establish programs and services for the following purposes:

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

(2) For the establishment and maintenance of centers, serving defined geographic areas, staffed by multidisciplinary teams and community teams of personnel trained in the prevention, identification, and treatment
of child abuse and neglect cases, to provide a broad range
of services related to child abuse and neglect, including
direct support and supervision of satellite centers and
attention homes, as well as providing advice and consulta-
tion to individuals, agencies and organizations which
request such services;

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

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

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

(e) Agencies, organizations and programs funded to
carry out the purposes of this section shall be structured
so as to comply with any applicable federal law, any
regulation of the federal department of health and human
services or the secretary thereof, and any final comprehen-
sive plan of the federal advisory board on child abuse and
neglect. In funding organizations, the department shall,
to the extent feasible, ensure that parental organizations
combating child abuse and neglect receive preferential
treatment.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 1998.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within .......... this the .......... day of .........., 1998.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/30/98
Time 11:00 AM